

**TOWN OF CHATHAM
MEETING MINUTES January 22, 2015**

**ZONING BOARD OF APPEALS
FINAL COPY**

ZBA MEMBERS PRESENT:

David Everett, Chairman
Mitchell Khosrova, Vice Chairman
JP Henkel
Robert Leary
Jeffrey Lick
Kary Jablonka
Adrian Ooms

Audience Present: Sharon Wing, Ian Wing, John Wapner, Reporter Emilia Teasdale.

Pledge of Allegiance was recited at 7 PM. Meeting was called to order at 7:01 PM by Chairman Everett. There were minor typographical changes to the minutes and one sentence revised. Motion to accept minutes as amended was made by Bob Leary and seconded by Jeff Lick. All board members were in favor and motion carried.

Mr. Khosrova inquired about the ZBA By-laws which were brought up at last month's meeting since he wasn't in attendance. Mr. Lick and the ZIC committee felt the document was redundant and Chairman Everett explained that the ZBA board felt it wasn't necessary to change what they already have.

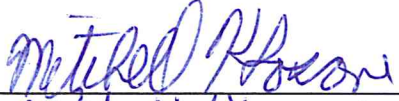
Application for a Special Use Permit from Sharon Wing, 875 County Rt. 13, Old Chatham, NY

Sharon Wing presented an application to host small chamber concerts and cultural talks in her home that she and her husband own at 875 County Rt. 13 in Old Chatham. They would like to host anywhere from four to eight concerts per year in their parlor which can fit up to 25 chairs. Mrs. Wing explained that she works in classical music and that she and her husband moved here recently. These events are not restricted to small chamber concerts or solo concerts but would also include talks about music. It is an opportunity for them to meet other arts presenters. The ZBA board inquired as to why the Code Enforcement officer referred this project to the ZBA referring to the fact that this type of project is not in the town code. Ms. Franks replied that Mr. Simonsmeier wasn't sure where this project would fall. He likened it to the PS 21 cultural events. The Wings explained that they would eventually like to charge to help offset the costs of the musicians. Mrs. Wing then explained where they are located on County 13 and that their parking area on their property can accommodate six cars. She plans to landscape the yard to accommodate more cars and she indicated that she would be overseeing the attendance and parking. The events are by invitation only. Mr. Khosrova didn't believe the Wings need to get a permit citing this is a private use. Mrs. Wing inquired about charging for the events to help offset the costs and if that is a problem. The board felt this isn't an issue. Mr. Lick said he had spoken with Mr. Simonsmeier and that "Walt's" concern is with the parking. Chairman Everett stated to the applicant that if it becomes a weekly event with more cars and cars begin parking on County 13 that it could become a problem. Mrs. Wing then said there were two neighbors who have offered parking to happen on their property should they need additional parking. Chairman Everett explained that if they, the Wings, aren't full time residents this, too, could be an issue. Mrs. Wing assured him they are residents of the

property. Chairman Everett on behalf of the board stated for the record that a special permit isn't necessary and these are private affairs they are hosting in their home. They have been advised about parking on County Rt. 13 and if they were to change the use of the venue from a full time home to a reception hall, etc., then a special permit would need to be obtained. Mrs. Wing asked if food was allowed. Again, the board stated that this falls under private home use. Mr. Jablonka thanked the Wings for being good citizens and going through the proper channels to make sure what they are doing is allowed within the Town zoning code.

A discussion took place as to if and when a special meeting date is needed in order to accommodate PS21's Phase 2 application. The acoustical expert is unable to make the regularly scheduled ZBA meetings. The board agrees it is important to hear his report however, the board cannot find an alternate date. The February meeting will be scheduled at its regular time. The PS 21 escrow contract has been received, copy is on file in the ZBA office.

A motion to adjourn the meeting was made by Mr. Khosrova. All members were in favor and meeting adjourned at 7:24 PM.


Mitchell Khosrova, Dep. Chair
David Everett, ZBA Chairman

Respectfully Submitted by

Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: JANUARY 22, 2015

ZONING BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

Sharon Widing
Jan Wing

John W. W. W.

Anne Starn

Emilie Teasdale

Town of Chatham
Meeting Minutes February 26, 2015

Zoning Board of Appeals

Draft Copy

Final

ZBA Members Present

Mitch Khosrova, Deputy Chairman
JP Henkel
Kary Jablonka
Bob Leary
Adrian Ooms
Jeffrey Lick

Excused: David Everett, Chairman

Public Present:

Nick Vamvas, Crawford & Assoc.
MaryBeth Slevin, Atty for PS21, David
Kahn, PE, Jody Rael, Betsy Wyman,
Scott Longstreet, Scott Lukowski, Susan
Davies, Judy Grunberg, Fran Veillette

Tal Rappelyea, Town Attorney
Marilyn Cohen, Planning Board Chair
Dona Staron, Planning Board Deputy Chair
Paul McCreary, PE, Crawford & Associates

The Pledge of Allegiance was recited. Deputy Chairman Khosrova opened the meeting at 7:01 PM. A motion to approve the January meeting minutes was made by Mr. Ooms; it was seconded by Mr. Henkel. All board members were in favor and the motion carried.

Item #1 Columbia Falls, Rt. 295 Chatham, NY, Informational

It was announced for the record that Deputy Chair Khosrova would recuse himself with relation to this application as he is Mr. Rael, the applicant's attorney. The chair duty was turned over to ZBA member Mr. Leary. Mr. Rael was asked to explain his application. Mr. Rael stated that there is a building on the property that was the office for the trucking company owned by Columbia Box. He has converted it to a caretaker's living space for security and maintenance reasons. He went on to say that since they have someone living in this building, break-ins at the mill are down to zero, there is no new graffiti and they have been able to keep kids out of the property. The lawns are being taken care of by this person who is residing in the building. Mr. Rael thought they needed a variance, but he was told that the property zone changed to commercial/industrial from industrial. He believed that under a commercial use a single family dwelling is a permitted use. The town attorney was not aware of this. Attorney Rappelyea said the town expanded the industrial zone to the south but he didn't think they changed Mr. Rael's property to commercial. If it's a permitted use in the zone then Mr. Rael doesn't need a permit. Mr. Jablonka then stated it had been a shower room back when Columbia box was there and Mr. Rael confirmed this. Mr. Lick questioned the zone stating he didn't believe there is commercial/industrial designation, that we have commercial OR industrial. Mr. Rael responded that there is a commercial/industrial zone. Attorney Rappelyea stated that the zone is either business OR industrial and said he believes Mr. Rael's property is industrial. He then read the accepted uses of the property: Accessory use, manufacturing, automotive repair, dry cleaning, farm or residential pond, health club, office, public facility, research or testing lab, retail sales, warehouse and trucking sales. There is only one permitted use with a special use permit and that is a commercial use serving the industrial area. We are looking for a use variance. Mr. Rappelyea stated they are very difficult to prove and one will have to show there is no other use for the property to get a reasonable return out of it. Mr. Leary said that it once was a security office for the business and Mr. Lick wondered that if it is really part of the business that this is an accessory use instead of a residence. If Mr. Rael wanted to make this a residence, than that would be a different use. Mr. Henkel asked Mr. Rael if the person living in the building was his employee and the replied yes, he is a mechanic for the property and the security person. Mr. Rael stated there is really no other use for that building. Mr. Lick suggested to not change it to single family dwelling...call it an accessory use, housing for a security guard. It is has to be Mr. Leary stated it has to stay that way or if he goes to rent it or sell it would change. Mr. Lick then asked Mr. Rappelyea if it is being used for that purpose...what questions do you need to satisfy in terms of proper septic, are there other questions

yes. Mr. Khosrova asked the town attorney if he was okay with this being an amendment to the original application and Mr. Rappleyea responded yes.

The ZBA had previously requested a section drawing and Mr. Vamvas provided that to show how the building is situated. He showed the change in elevation on the map, the tree line, and the zoomed in view of the detail for the building. Mr. Khosrova asked what people may see from Route 66. Mr. Vamvas stated it's hard to say but with the trees you may only see some of the building. The building will be 13 feet lower. Mr. Khosrova asked if a color has been picked. Mr. Stoller replied that the exterior would be vertical barn siding with a weathered wood look. Mr. Khosrova asked if they would provide a sample of this siding at the next meeting. Mr. Vamvas stated the difference from the last drawing of the elevation of the top is 15 & $\frac{3}{4}$ ft. lower. The building itself would be eleven feet shorter. Attorney Rappleyea asked if this is going back to the original application from ten years ago for comparison. Mr. Vamvas replied that yes it is and stated the building is now smaller not just in square area but shorter overall. Another new item issued was a full scale aerial view to correspond to the original letter Mr. Khan prepared back in December. Mr. Leary actually called them on this so Crawford has revised the scale and Mr. Vamvas provided extra copies for the board. This is a replacement of the material they sent on the 12th. Mr. Leary inquired as to where people are they sitting when it's an outdoor performance. Mr. Vamvas indicated where this was on the map. They will be seated under the footprint of the roof. Mr. Khosrova asked if during the performances there will be open area. The reply was yes in the summer only. Mr. Henkel stated it will be closed on three sides. Mr. Henkel confirmed with Mr. Vamvas that it will be opened and closed twice per year. Mr. Vamvas stated that covers everything they have submitted to the ZBA.

Mr. Vamvas then reviewed Mr. McCreary's letter received that day. According to Mr. Vamvas, Item #1 Amended items, seems to be an "FYI" to the board. He said to the ZBA that if there is anything in particular to make this a complete application to please let them know and they are happy to provide it. There is nothing further. Ms. Slevin said the materials they have submitted thus far are what the board has asked for, the visual assessment the comparisons between the both phase two's, the well and the differences between the two.

Mr. Vamvas went on to Item #2, Hours of Operation: He stated that he would come back to that item.

Item #3, Parking area: From Mr. Crawford's perspective, Mr. Vamvas stated that it is what it is. It was already there in 2005 prior to the first season of the tent. There are no plans to dig it up and reconfigure it. He referred to Mr. McCreary's assessment that the distance between the parking stalls doesn't quite meet a typical aisle width. Everyone has seen the parking and there is no striping. They meet the ZBA requirements in terms of spacing. Cars are going to park how they are going to park. Space may be narrower than what you see in a shopping mall but Mr. Vamvas doesn't see this as an issue. Mr. Khosrova asked Marilyn Cohen of the Planning Board for input. She stated that this parking had already been approved. Generally, they go by the state requirements. They don't necessarily require striping. It will go by the square feet of the building and occupancy. They would look to Mr. McCreary for advice on the spacing once we get the actual plan. She and Ms. Staron have been to the facility and there isn't an issue with the parking now. Mr. Henkel stated that this is an optimistic estimate of the spaces available due to the fact that there is no striping. It's been operating and the question becomes are they parking safely. Mr. Khosrova stated he's never had a problem in the past there. Mr. Leary asked how many spaces there are. Mr. Vamvas thinks there up to 120 spaces there. Person capacity is 300 which is one parking space for four seats. Mr. Lick asked if the concern that the spaces are too narrow if there were lines or is it the aisle space between the rows. Mr. Vamvas confirmed it is the space between the rows. Mr. McCreary stated he can clear up the comment. He stated that it's not the number of spots or the striping. It's a gravel area. What they looked at was the original phases and what you see in this map is slightly different than what was proposed at that time. The issue occurs in the aisles between the cars and at the ends of the aisles. The aisles vary quite a bit and the same for the ends. They look at that as vehicular movement which makes it difficult for two cars to pass. Mr. Henkel asked if there is any indication of the aisles. The answer was no. Mr. Henkel commented that this is completely theoretical. Mr. Jablonka asked if there would be parking attendants. Mr. Vamvas replied they haven't considered that and that they are used currently. Mr. Khosrova asked if there is any designated handicap spaces and the answer was there are five spots. Mr. Henkel inquired as to what the current capacity of the tent is or what is the largest number of tickets that can be sold is. The answer was 170 from Susan Davis, the program coordinator at PS 21. Attorney

Mr. Khosrova stated the need to make this application and documentation is complete so it can go to public hearing. He asked if the board had anything else to discuss. With regard to the 90 DBA level, Mr. Henkel asked if it would make sense if one were doing the limiter tuning to do some verification that the testing will be done at the property line as well. Mr. Khosrova replied that testing will need to be done after construction and during a performance to make sure that indeed the 90 DBA at ten feet is producing not more than ambient at the closest property line. If that is a condition, in his mind and it's not being met, the applicant would have to come back and adjust it. Mr. Khosrova asked if the applicant is okay with this and their reply was yes. This would be a condition the ZBA would put on them as subject to approval. Mr. Khosrova went on to say with everything in reality they need to be sure that it's meeting with the ambient level at the property line and that we have the applicant's word that it will be adjusted if necessary.

Mr. Leary was still not convinced about the times of operation and was asked by Mr. Khosrova that if the noise wasn't an issue would he still be concerned with the hours. Mr. Leary replied "no." Mr. Henkel remembered that they previously had difficulty calculating ambient on the western property line because of the creek and the train tracks and asked if that sounded familiar to anyone else. Ms. Slevin replied that there always will be variables regarding ambient with regard to the surroundings. This is one reason why Mr. Kahn was looking to measuring from ten feet from the building to really establish a basis. She explained they can't predict what every day ambient will be when we get there. They can however predict what the attenuation from a point they can control. She referred to cars, trains, planes, etc. that are variables in any neighborhood. Mr. Khosrova stated that he would feel confident stating that no one is making a representation that neighbors won't hear anything. But it won't be a situation where when sitting at a dining room table you can't hear the other person talk. The opening of the building is on the east side. Mr. Kahn said the good news of the siting of the pavilion in the new plan is that historically one challenging event happens in the west and the properties in the west will receive the greatest benefit in the pavilion compared to the east. He went on to say that even with the properties to the east regardless of where you are on the property line the noise impact will be lower emanating from the pavilion than from the tent.

Mr. Khosrova went on to question the hours of operation. He asked if the 9 to 11 and 9 to 11:30 hours would have performances during these hours. Susan Davies replied that the morning hours would be mostly workshops for elderly and children and that would include dance workshops. Mr. Khosrova asked if there will be amplified music and Ms. Davies replied that the music would come probably from an iPod or a recording. Mr. Khosrova then inquired about the later hours. Will there be actual music till 11 PM or 11:30 PM? Ms. Slevin replied that these are the current hours of operation at the tent at PS21. Mr. Khosrova wanted to clarify the application's intent, for performances for those hours. This could lead to cars with lights coming down the road and honking from cars after the later performances. Mr. Khosrova asked that there would be no amplified music starting at 9 am. After some discussion it was determined that they could start amplified music if necessary at 11 AM and not before. Ms. Davies had explained that children from the Crellin Park camp program go to PS 21 for programs and performances during the day. Mr. Khosrova then asked if they are asking for amplification to go to 11:00 PM on Sunday thru Thursday and 11:30 PM on Fridays and Saturdays. Ms. Davies responded yes. Mr. Khosrova asked if it included movies and stated that he himself was willing to agree with movies playing late, but not loud music. Mr. Leary responded that movies can be very loud. Mr. Khosrova replied that you don't have the same type of sound that amplifies out. Mr. Kahn stated that the wording could be "live music." He went on to say that everything is amplified, what is loud is the live music and if you want to put restrictions on this, than go with no live music could be the protection after a certain time instead of music that is amplified. Mr. Khosrova stated he is trying not to restrict them. Ms. Davies then spoke. The only problem they have is West African dance and drumming performances that are live. Mr. Henkel stated that he wouldn't be bothered by movies but he would be bothered by a DJ until 11:30 PM which isn't live but amplified. Mr. Kahn said the best way to control it is to specify it at the sound level at the property line and how we create it and how we control it is our responsibility. He went on to say that the question is if 90 DBA measured 10 feet is too loud at certain hours should we cut it down to a certain level that would give them freedom to have certain activities over those hours and give them ability to turn down the level? Mr. Henkel asked if the limiter could have that capacity to have two different settings and Mr. Kahn answered yes. Mr. Khosrova then asked what would be an appropriate DBA for people who sleep late. Mr. Kahn said that 80 DBA would be half as loud as 90 DBA. Mr. Vamvas questioned this. Mr. Khosrova stated that we agree

will bring it lower below ambient. It won't be limiting at all. It was then determined that the hours will remain the same as in the PS21 application with an 85 DBA level.

Mr. Rappleyea asked for clarification on the schedule for the building being open and closed with the change of seasons. Do we need to have dates on the calendar as to when this happens? The reply from Mr. Khosrova was no.

Mr. Khosrova asked the board if they are ready to deem the application complete for public hearing. Mr. Leary asked about the tent. Mr. Vamvas stated that once construction begins the tent will be gone. Mr. Jablonka was satisfied that the application is complete and ready for public hearing. He then made a motion to go to public hearing with a second received from Mr. Lick. All board members were in favor.

Ms. Slevin requested that a special public hearing could be held because the sound engineer cannot be there on the regularly scheduled ZBA meeting. Mr. Henkel also stated he cannot make meetings before 7:30 weeknights. Mr. Khosrova feels that it is essential for Mr. Kahn to be in attendance and suggested that possible dates be emailed to everyone and that it is important that ZBA Chairman Everett be in attendance. Ms. Staron reminded the board that there is a capacity of 44 persons in the Town hall and we may need to move to a larger space. This will be discussed with Chairman Everett.

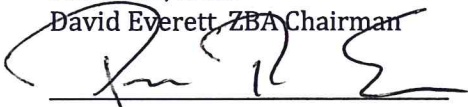
Mr. Vamvas distributed a copy of the map to replace the one from the 12th. The scale has been updated. The image is exactly the same.

It was discussed the Columbia Falls application be added to this public hearing and any other agenda items so we don't have to have two meetings this month. Mr. Henkel asked the town attorney what worked for him in terms of dates. Mr. Rappleyea referred to March 30th or 31st, but would have to see if he could change what he had booked in those dates. Mr. Khosrova then asked the town attorney to send his dates of availability for this public hearing and to be sure to include the clerk in the correspondence.

Motion to adjourn the meeting was made by Mr. Jablonka and seconded by Mr. Lick. All members were in favor and the meeting adjourned at 8:31 PM.

March 13, 2015

David Everett, ZBA Chairman

A handwritten signature in black ink, appearing to be 'David Everett', written over a horizontal line.

Respectfully Submitted

Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: Feb 26, 2015

ZONING
~~PLANNING~~ BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

NAME

email

Betsy Wyman	betsy@sundayswan.no-
DAVID SEAMAN PE	BUILDING DESIGN SOLUTIONS
JODY PAEL	WHADESTATEN.L@GMAIL.COM
Donna Starnon	
Marilyn Cohen	
SCOTT LONGSTREET	SPLESQZ@CAPITAL.NET
SCOTT LUKOWSKI	SLUKOWSKI@SSP-LEGAL.COM
Susan Davies	ps21@fairpoint.net
Fran Veillette	fnifosiv@aol.com
Judy Grunberg	jbgrun@berk.com

**Town of Chatham
Meeting Minutes March 30, 2015**

**Zoning Board of Appeals
Draft Copy** *EWNA*

Members Present:

David Everett, Chairman
Robert Leary
Jeffrey Lick
JP Henkel, arrived at 7:20 PM
Kary Jablonka

Tal Rappleyea, Town Attorney
Marilyn Cohen, Planning Board Chairman

Excused: Mitch Khosrova, Deputy Chairman
Adrian Ooms

Kary Jablonka was excused early

Public Present: Betsy Wyman of Columbia Falls,
Nicholas Vamvas, PE Crawford & Assoc, David
Kahn, Accoustic Distinctions, MaryBeth Slevin,
Atty for PS21, Judy Grunberg, Evan Stoller,
Patricia & Terry Lasky, Colleen Safford, other
members of the audience

Brenda Marello, Stenographer for Crawford & Assoc.

The Pledge of Allegiance was recited at 7:00 PM. At 7:01 PM the meeting was called to order by Chairman Everett. Mr. Jablonka motioned to accept the minutes of February 26, 2015 with a second from Mr. Leary. All board members present were in favor and the motion passed.

Public Hearing Item 1, Columbia Falls Request for Interpretation, 295 Route 295, Chatham, NY

Chairman Everett stated he was not in attendance at the last meeting and asked Betsy Ferris who was standing in for Jody Rael of Columbia Falls, who was out for a family medical emergency, for a recap of the information presented. She explained that the property is under a caretakers watch and the amount of vandalism at the property has reduced by having this person living in the structure on the property. Columbia Falls would like formal approval to have the caretaker live there on the property at the caretakers building and are requesting that the current use be changed to a residence. Mr. Lick explained to the Chairman what took place at the meeting from last month and that it was a collective thought that this request be deemed an "accessory use." Chairman Everett believes that the building sounds like an accessory use but asked if it was customary to have an apartment for a security person on an industrial lot. Mr. Leary then referred to the Town's attorney, Atty. Rappleyea, who then explained the need for the change of use. He explained that the CEO, Mr. Simonsmeier deemed that Columbia Falls would need to go before ZBA for the interpretation. Mr. Jablonka stated that it was integral to the operation of the facility and Mr. Everett inquired to the Town Attorney if it is customary for this to happen, a residence in conjunction with an industrial use. Atty. Rappleyea replied that anecdotally it is something that could minimally have residences on site for the employees to eat, sleep and stay. Chairman Everett stated that this is zoned industrial and there is only one industrial zone in town and limited in size and it is not going to have a wide precidential impact. Mr. Leary inquired to the ZBA clerk if there was proof that required notices had been sent to the neighbors by the applicant and the response was yes. Chairman Everett asked for any other comments and there were none. A motion to open the public hearing was made by Mr. Leary and seconded by Mr. Jablonka. The Chairman then asked for comment from the audience and there was none. A motion to close the public hearing was made by Mr. Lick and seconded by Mr. Jablonka. All members were in favor and the motion was carried. Chairman Everett stated that this item is exempt from SEQR review. Mr. Leary made a motion to accept the following statement with regard to the regulation of this building and its use: "The one story building located at 295 Rt. 295, Chatham is an accessory structure and it cannot be rented. It can only be used as a residence for security guard/caretaker." Chairman Everett moved to accept this statement, Mr. Jablonka seconded it. *Ayes were received from Jablonka, Leary, Lick, Everett and*

tested in 2003 and analyzed pursuant to Part 5 of the state sanitary code. It produces 6 gallons per minute which is more than adequate for this use. Water supply will be a public water supply due to the facility being a year round facility, classified as transient non-community by the NYS DOH. Mr. Vamvas explained that because the analytics that were completed in 2003, they expect they are only going to need point service treatment that will comply with the aforementioned Part 5 treatment water standards, and that would include disinfection. The sanitary sewer on site is to the east and located in the same spot that was approved in the original EIS process. All sanitary waste will be managed on site. There will be a septic tank and pump station. The field location was tested and witnessed by the DOH (Department of Health) in November, 2013 and due to the proposed water use being over 1000 gals., but under 10,000 gals. A day, they know that a SPDES general permit is needed for waste treatment. Total site impacts will be just over four acres, which would require a SPDES permit. The runoff from the impervious surfaces will be collected in downspout drains, streams, gutters and a bio retention that will treat the runoff. It matches the existing storm water treatment. There are also bio-retention areas and the bio-retention in large storm events would actually discharge into underground detention for overflow storage, which matches the existing storm water treatment. They have underground storage in these two parking bays. Crawford and Associates provided a SWPPP to Morris and Associates for comment this past December and they have responded to the report as part of the site plan application.

Mr. Vamvas continued. The proposal will require new lighting because of a new driveway being added. There will some full mounted lighting and ground lighting to allow for safe passage. None of the lights are near property lines and there will be building mounted lighting at entrances and indicated on the plan and it will down lighted. Because of size and use of the structure, they are required to have sprinkler system within the entire footprint of the property. They are constructing a 50,000 gal. water vault located near the loading dock. Along with the sprinklers would be fire pumps and backup generators, and everything is going to be designed to comply with NFPA and NYS fire code.

He has made attempts to contact the Chatham Village fire department, but has not received a response yet. According to Mr. Vamvas, the previous assistant fire chief, Mr. Rideout was present at the walk thru in 2013 and he agrees with former Chief Mr. Pratt for the original connection to the onsite fire suppression. Mr. Vamvas expects that Mr. Rideout will be sending a letter regarding this to the ZBA.

Mr. Vamvas went on to explain the difference between the revised Phase two project and the original Phase two. It will impact four acres. The original was going to require disturbance over seven acres of soil. There is less than an acre of new impervious surfaces between the patios, the loading dock, the new drives, the walkways, the building. The original Phase two was over 1.8 acres of impervious area, so they there is a reduction in disturbance of 43% and a reduction of impervious area of 62%.

The original seating was for 405 patrons. The new facility will be limited to 300 seats. Because of this there is a 25% reduction in water and in amount of traffic/air quality.

The storm water was designed pursuant to general permit 0201. The new General Permit 0-15-002 released by the DEC is more stringent in water quality treatment. Because of this they are treating the storm water to a higher quality.

the amount of area where the sound can essentially escape into the area is significantly less than the existing tent structure, which in large part why they were calculating lower environmental noise impact from the pavilion compared to the tent.

Chairman Everett then asked Mr. Vamvas to explain how the facility would operate as far as closing and opening it and if he had brought the elevations of the building with him. At this time, Mr. Henkel asked Mr. Kahn for a point of clarification. He asked Mr. Kahn if the calculations of the decreases at the various property lines, 6 east, 2 north, 12 west, 7 south, is based on the original 90 or was it based on the 85. Mr. Kahn replied that the calculation is actually independent of the level and is based on the distance between the pavilion and the property line.

Mr. Kahn showed and explained the elevation maps and where the open and closed portions were. Mr. Vamvas was asked how the structure is going to operate from season to season. Mr. Vamvas replied that the black box portion (showed the drawing) is closed off during the winter, with small performances taking place then, and then in the summertime the temporary wall that are bi-fold doors can be opened. In the colder weather, it can be closed. From May to sometime in the fall the doors would be open. Chairman Everett asked if there is a stage door and Mr. Vamvas indicated where this was on the map. He said this could be used for large equipment. The stage door will be closed during the performances. Mr. Lick asked if there is a plan developed for how the doors will be open and close as it wasn't clear at the first meeting how this would work. Mr. Vamvas replied that this is still under discussion and for right now the doors will open and close two times per year, spring and fall. He indicated that they had submitted the site plan that day to the Town planning board. They will discuss further material they will need for the site plan application and they will also submit a building permit application to the building department.

Chairman Everett asked if Mr. Vamvas met with any other permitting agencies for feedback. He replied that he met with the Department of Health for the water supply. They had mentioned earlier that they would be transient non-community. They will have to do some form of service treatment or disinfection.

Mr. Everett asked for confirmation of hours of operation as discussed at the previous ZBA meeting. Ms. Slevin reviewed the hours of 9 AM to 11 PM Sunday thru Thursday and 9 AM to 11:30 PM on Friday and Saturday.

Mr. Leary inquired about the sound again. "If you go out ten feet and you have the sound limiter and you adjust that to 85 and there is a performance going on. The property line is 850 feet to the north. At the 850 feet what will the dB be? It cannot exceed 85 correct?" Mr. Kahn replied that it would be much lower. Mr. Vamvas replied that 42 decibels is what was calculated for actually 90. Mr. Kahn agreed that if it was 90 decibels measured 10 feet, then at the property line to the north, the measured level would be 42. If it is 85 measured 10 feet from the tent, then it would be 37 decibels at the property line to the north. Mr. Jablonka stated that this is below ambient. Mr. Kahn went on to explain that the measured ambient level at the property line to the north was 44 dB. They would be eight decibels below that.

Chairman Everett addressed the applicant by stating that at last meeting they had committed to the fact that renters would have to use the PS21 sound system, and that is regulated by the limiter and only by PS21 staff and the applicant confirmed this. It was also confirmed that everything is indoors.

was correct. Ms. Slevin replied that they would recommend that there be a process of commissioning of the limiter and basically the whole sound system. They would request that during this commissioning period the Town verify that the ambient levels are being maintained during that process. This would provide opportunity to make sure that the Town understands how the limiter works and that it does indeed work, both ten feet from the roof line and then also at the property line.

Chairman Everett asked the town attorney if he could accept this protocol through a condition if the board decides to do this and his reply was yes. The chairman then asked for other comments on the application. Mr. Henkel then asked Mr. Kahn to speak about the berms. Mr. Kahn explained that this was included in their calculations. If there is the direct line of sight from the sound source to the receiver at the property line, they can calculate the reduction based on the distance, but if there is not a direct line of sight and the sound has to bend around such as the berms you see on the side of highways, then you can calculate the additional reduction that would be in place depending on the location and the height of the berm. According to Mr. Kahn that when they looked at the topography in more detail; there is no direct line of site to the north between the pavilion where it is currently designed to be constructed and the property line to the north. Essentially there is already a berm there based on the topography of the land. There doesn't seem to be any value to adding any additional berms.

Kate Gulliver, a patron and volunteer of PS21 spoke to the noise issue. Usually facing the parking lot she didn't hear any undue noise. She stated that the crowd is polite and has heard nothing there that would bother the neighbors admitting she is not a neighbor. She believes it would be a real addition to the life in Chatham referring that there is little to do when the summer crowds are gone and there is very limited entertainment.

Colleen Safford, a neighbor, spoke that she has never argued with the idea of PS21 and having lived through this for quite a number of years. She stated that they have come to hear a science of this application in the past, referring to the application in 2005 with the tent and they were told that the noise was only at ambient levels at the property lines, and that science never held true. When it didn't hold true, she stated that she made numerous phone calls to the sheriff's department, the town, etc. quoting that "The sheriff says, 'Well, the Town approved it, so there's nothing we can do either.'" She feels that as a neighbor, the science seems to be pretty muddy, and she would like to have some type of checks and balance system that if this science doesn't hold true and that they have something to go to. She is concerned with the late hours, stating that she doesn't believe that anyone has a problem with the performances, but it's how late they go and the fact that there is no formal system that if the science falls apart that there are some checks and balances. She asked that there be something that can be put in place that way.

Patricia Lasky, who lives ½ mile to the north of PS21, spoke next. She stated they were told nine years ago that the tent was not permanent. They were told that this would eventually be a closed facility. She said she is thrilled it will be closed for the winter and feels it should be closed all seasons. She went on to say that she heard the noise from the tent, even from the berms and that all of this landscape was supposed to protect her after guaranteeing that this wouldn't happen. She is now faced with a permanent outdoor facility from 9:00 to 11:30 PM. It didn't work for the tent, now it's that much closer and doesn't believe she will have protection from the noise. She stated that this is an "outrage." She stated that (PS21) doesn't know what doors they will have on the building and there is no fail-safe and there should be a fail-safe for them. She went on to say that the board thinks that they are unreasonable when in fact they love the arts. She wants it all to

Mr. Henkel wanted to know where the speakers will be mounted and Mr. Kahn indicated on the map where the speakers would be mounted under the building. He went on to say the speaker that is about 22 feet above stage level is in the center. And then there will be speakers to the left and the right. Those speakers will be located roughly 10 to 11 feet above the level of the stage platform and they are pointed down toward the audience. The design of the sound system will limit the sound to the seating area. When you move outside that area, the sound will be considerably lower. They are directional speakers. Chairman Everett questioned the positioning of the speakers in relationship to the opening of the building. Mr. Kahn explained that the location of the speakers is determined by where the speakers need to be in order to effectively cover the seating area and not beyond the seating area. He continued on that the elevation is dependent both on that and on the quality of the sound. The idea is to try to bring the speakers down lower so that the sound that comes out of the speakers is more natural. They are 4 to 5 feet above the level of the talent in order to create a more natural sound whereas the center speaker is pointing more straight down. Chairman Everett asked that if he was standing in the opening of the building and he looked into the building would he have direct line of sight of the speaker or will the speaker be higher or lower where he is standing. Mr. Kahn believes he will have direct line of sight to the speaker depending on where he is standing.

Atty. Rappleyea inquired as to how this array is set up currently at the tent. Mr. Kahn replied that it is a portable system, so there is some variation. They won't have the same level of directivity control as these that are being designed. He went on to say that they were conservative in their calculations and did not include any additional attenuation due to the loudspeaker characteristics in the calculation. They think there will be some benefit but didn't include this in the calculation in order to be more conservative and to at that time give the designer of the speaker system a little more flexibility.

Chairman Everett was confused in that he thought they had said that due to the elevation of the floor as it sort of slopes down toward the stage that will actually act as a line of sight. He asked if it was fair to say that it will block the line of sight for the sound to basically get out of the opening. Mr. Kahn replied that he wouldn't say completely this would happen. It does reduce the aperture of the opening. It doesn't eliminate it; otherwise, it would be a completely enclosed facility. So there at certain elevations, there is a direct line of sight into the facility from the east. Chairman Everett replied that in certain areas around the facility, there is a direct line of sight from the speaker out through the opening of the building and Mr. Kahn stated that this was correct. Mr. Lasky and Mr. Everett wanted to know through which elevation and Mr. Kahn replied that to all other elevations except the west that there would be at least some areas where there is direct line of sight. The chairman asked Mr. Kahn if he knew where these would be or if it really mattered at all for purposes of his analysis. Mr. Kahn replied that it didn't matter for the analysis because they are monitoring the sound level which does have direct sight to the speakers and are setting the limiter in order to ensure that the level at the property line does not exceed the code and does not exceed the ambient level.

Mr. Lasky inquired as to the east elevation and if the opening and the peak of the roof is to the east and the what the width of the opening is, referring that it looks like it is acting as its own triangular megaphone out to the east and toward the mountains across the street. Chairman Everett asked for clarification on the height of the opening to the east. Evan Stoller and Mr. Vamvas replied that it is 20 feet at the peak. The chairman asked if their argument is basically that it is irrelevant because the limiter is going to limit the dB level to 85dB ten feet out of the structure. Ms. Slevin responded on the east side and Mr. Kahn responded yes. Mr. Vamvas referred to the sketch showing the elevations. He showed that the existing grade rises up from the building and the drops down

current proposal, but the board has not made a decision on anything yet. Mrs. Lasky went on to say that she thinks the hours are preposterous without an enclosed facility. There is no architect here who knows what he measured and how he designed the building. She wanted to know who can speak to these issues. She does not understand what the height of the walls is and the distance between the roof and the floor and wanted to know why we not understand how much open space there is. What is the percentage? She believes that if it is not an enclosed facility, the hours are preposterous.

Mr. Henkel then asked Mrs. Lasky and Ms. Stafford what hours they thought were not preposterous. Mrs. Lasky responded that "it is hard for her to be comfortable because I'm hanging myself. You're giving me a rope to hang myself." Mr. Henkel replied that her answer was fair enough. Mrs. Lasky went on to say that she was guaranteed nine years ago when this first started that we shouldn't worry that it was ultimately going to be an enclosed facility. She wants the board to honor their word and make the facility an enclosed one because that's what they all bargained for. She stated that when you are a member of a community and people tell you that there is a guarantee, that people should standby that. She told the board they should be men of their word that this is what they were told and believed. She explained that she has sat for five years listening to what comes to her as noise. She knows it is music to others but not to her. She believes the board has created a problem of their own making and that she was guaranteed an enclosed facility. Chairman Everett responded that there was never any guarantee of an enclosed facility. Mrs. Lasky interrupted, disputing his statement. The chairman asked her to not interrupt. He went on to say that what the ZBA did was to approve an enclosed facility and that the applicant has the right to change that approval any time they want. He said, "So they are here before us with an application and the ZBA is considering changing what we had previously approved, and we are evaluating the potential impacts related to that. So there was never any guarantee. I just want to make sure that the record is clear on that particular point."

Mrs. Lasky spoke to this by stating that they were told "rest assured that we should patiently wait out the five years, that's all we had to put up with." She stated that she wished she had that in writing. She stressed that they were told to wait out the five years patiently and it was going to be an enclosed facility.

Mr. Lasky addressed the board again. He said he did not know what a guarantee means to the Board, but referred to a discussion a couple of years ago. He said, "the deal was, the Board said...they promised the neighbors: You neighbors, you shut up. And if they don't start construction within five years after the inception of the tent on a permanent facility, we close the tent down." He said to the Chairman, "You didn't remember it. I'm not sure you were on the board at that time that promise was made, but Tal remembered it. Do you remember it now Tal?" Atty. Rappleyea responded that he would have to check his notes. Mr. Lasky stated that he said he remembered that was the promise. He told the board that PS 21 came back to them about three years ago or so and said they hadn't raised one penny yet in donations, so they needed to get an extension on the tent and the ZBA gave it to them. He said that this was their first disappointment. Mr. Lasky finished by saying that the board can say one thing and do what they want the next day.

Chairman Everett thanked him and asked for any other final comments or thoughts. Mr. Leary asked a question about sound. If he looked north at ten feet, with 85 dB at the property line and if he was a ½ mile away from the property line would he hear anything with the limiter. He asked at what footage does the sound end. Mr. Kahn replied that the difficulty for this is that the audibility will depend on the ambient noise level. According to him, "One can calculate the reduction from 85

resolved. Mr. Wapner replied that they have worked from home for 37 years and had called the town many years ago to see if they would need a permit. They were told they did not. He stated that he has no problem in obtaining this permit now.

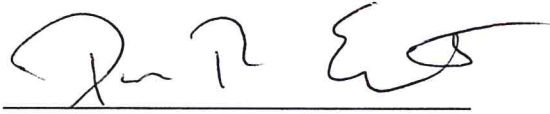
The second issue is the issue with the tennis court on their property. Currently there is a tennis pro who teaches tennis lessons to various friends, family or associates of the Wapners on their court during the nicer months of the year. They were referred to the ZBA because the Town CEO believes the Wapners are operating a business because the tennis pro gets paid to teach lessons. Chairman Everett asked the town attorney why they would need a site plan review.

The chairman asked if the tennis pro is related to them and he is not. He is paid by the people that take lessons. The Wapners do not receive any compensation. Mr. Wapner explained who takes lessons, mostly friends, family members, etc. He explained that will be an issue if he needs a site plan. They would then curtail the lessons that Eli, the tennis pro, teaches. Chairman Everett believes it sounds that this fits the home occupation classification. But the issue becomes that if we deem this a home occupancy, then the ZBA will require a site plan. Chairman Everett then read the ordinance. He asked the Wapners how many people come for lessons during the week and Mr. Wapner replied not more than a dozen people. Mrs. Bobsiene replied that not all people pay the pro to teach. Chairman Everett asked how big the driveway is. Mr. Wapner explained the driveway and that there is an area for parking right off the road near the tennis court and that no one parks on the road or driveway. The court is separate from that area. The hospital tournament also utilizes the court for their annual fundraising tournament. It is used once per the weekend during the summer. Atty. Rappleyea said that it is clearly subordinate to the primary use there. Because it doesn't fit any of the other requirements is this simply an accessory use or a home occupation? Chairman Everett read the statute. Being that the tennis pro is not an employee of Wapners and the owners are not conducting the actual activity it does not meet the home occupation definition. He stated that this could be an accessory use to the residence. Chairman Everett inquired as to why this is any different to someone who hires a lifeguard to teach lessons at their own pool. Mr. Henkel explained the reason a site plan is required is to determine the objection ability of what is taking place outside. Marilyn Cohen, the Planning Board Chair, spoke that a site plan is for safety and protection.

Chairman Everett feels that this can fit under the definition of an accessory use to a residence due to the number of people involved and the amount of times it happens. He said that if it goes beyond that then it becomes something more than an accessory use. Atty. Rappleyea said that this could be a good interpretation for future uses on that road and the board is addressing the potential of what uses could happen on that road. The chairman explained to the Wapners that with this interpretation this will be a limited use and they will need to adhere to that. Chairman Everett then said to put the application for interpretation on for a public hearing for next month. The Wapners will need to notify the neighbors. Chairman Everett explained to them that because they appealed the CEO's decision which is stayed they can continue to hold lessons for the next month. The clerk will forward them the information of notifying the neighbors.

A motion to go to closed session under section 108 of general municipal law was made by Chairman Everett and seconded by Bob Leary.

A motion to close the meeting was made by JP Henkel. The motion was seconded by Jeffrey Lick. All members were in favor and the motion carried and meeting was adjourned at 9:30 PM.

A handwritten signature in black ink, appearing to read 'David Everett', written over a horizontal line.

David Everett, ZBA Chairman
April 16, 2015

Submitted by

Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: MARCH 30, 2015

ZONING BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

<u>NAME</u>	<u>ADDRESS</u>	<u>EMAIL</u>
Betsy Wyman	30 Kelsey Rd Chatham NY	betsy@sundogsokn.net
Vince Pecora	29 min street, Chatham	vpecorwo@sejustrs.stor.com
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Kate Gulliver	209 Harvey Mt Rd, Austalitz	kategull@gmail.com
John Feldman	93 Mallory Rd Spencertown	jfeldman@hummingbirdfilms.co
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Trudi Rott	721 RT 5 E. Chatham	
Cindy Bobseine	231 Thomas Rd	c.bobseine@funpoint.n
John Wapner	231 Thomas Rd	
TERRY LASKY	5112 Rt 66	
TRICIA LASKY	11 11	
Colleen Seiff	175 White Mill	walkandthair@gmail.co
James Krue	606 Albany Old Chatham, NY	12136
Julie Kabat	4221 Route 203, North Chatham, NY	12132
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Scott Lukowski	ALBANY	
Susan Davis	38 Wagon Hill Rd Chatham NY	
SCOTT LONGSTREET	597 ALBANY RD	SPLESQ2@CAPITAL.NET

MEETING ATTENDANCE SIGN-IN

Date: MARCH 30, 2015

ZONING BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

NAME

Address

Email

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Duplicato

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Nicole Furnee 146 Tree Hill Rd nicolefurnee@gmail.com

Gili Melamed-Lav 56 Fernhill rd.

Sadhu Chakravarthy 255 HARBORVIEW RD SI@YOUTUBEME.COM

Melony, Spock 42 Church St Chctn-M | melonyspock@

Hannah Hanan PO Box 130 Spencer MA 01462
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Table 1 Demographic characteristics of study population

**Town of Chatham
Minutes April 23, 2015**

**Zoning Board of Appeals Meeting
Draft Copy**

Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
Robert Leary
Jeffrey Lick
JP Henkel
Kary Jablonka
Adrian Ooms

Public Present: Nicholas Vamvas, PE Crawford &
Assoc., David Kahn, MaryBeth Slevin, Judy Grun-
berg, Evan Stoller, Terry Lasky, Tricia Lasky,
Kimberly Costigan, Mark Jackson

Tal Rappleyea, Town Attorney
Marilyn Cohen, Planning Board Chairman

Brenda Mareello, Stenographer for Crawford & Assoc.

Chairman Everett led the Pledge of Allegiance at 7:00 PM. He then called the meeting to order at 7:02 PM. First order of business was to approve the minutes from the March 30, 2015 meeting. Bob Leary made a motion to approve them with a second from Kary Jablonka. All board members were in favor and the motion to approve the March 30, 2015 meeting minutes was moved.

Item #1 Questaterra/PS21 Application for Amended Use

Chairman Everett asked that all members of the audience sign in on the attendance sheet. The Chairman explained that the ZBA had closed the public hearing for PS 21 at the last meeting. He asked if the consultants on the project had anything to say. Mary Beth Slevin, PS 21 Counsel, wanted to review what the commissioning process for the noise testing is, how it works, how they will implement it and how the town will be involved in it and compliance of it. Chairman Everett asked if she had spoken Paul McCreary of Crawford & Associates and her reply was yes. He then asked them if they had all come to an agreement. Mr. McCreary responded that the sound expert, David Kahn, had put together a draft and that he, Mr. McCreary had quickly reviewed it but would like to hear more about it.

Mr. Kahn distributed copies of the Schedule "B" Noise/Sound Testing Protocol. He explained the idea of testing the sound system with a test referred to as "pink noise". This is used because it is always at the same level and has the same amount of energy at every single frequency band. It will have the same constant level no matter what the type of music or drums are being played (Please refer to pages 8 thru 11 of the M-F Reporting Transcript 042315 ChathamZBA.txt for a detailed explanation.)

Mr. Vamvas presented a diagram/map that had been submitted in February showing several locations where they will check sound level at the worst case scenarios. Mr. Kahn explained they will check from the compass lines. He believes that the worst case is probably to the east and to the north. The sound system will be off and they will measure the ambient levels, which are dynamic and go up and down so these will be measured at a fairly long period of time. Once this is done, the sound system will be turned on knowing that it's measuring 85 decibels, 10 feet from the pavilion and they will measure the levels again. Their expectation is that those levels will not go up, but if there is an increase in the level that is greater than 6 decibels, which is exceeding the DEC guideline, they will turn the sound system down below 85. Mr. Kahn went on to say they will turn it down as much as they need to so that they know the worst case anywhere along the property line, when that system is up as loud as the limiter will let it go,

from the property owners to do so. Mr. Vamvas responded that they are not necessarily going to be testing on anyone else's property and that they would expect that all the testing would be done right at their property line. He believes that to the west based on the shape of the building there's not going to be enough leakage of sound to warrant testing on the west end. Mr. Everett believed the testing should still be done. He and Mr. Vamvas reviewed the property line access on the map.

Chairman Everett then asked Mr. McCreary if we would set this up so it will be "self-executing" so that there is no need to come back to the board during this process. This would mean that there is a protocol set up that is going to be a road map for the consultants to follow to get to whatever the limit is so there would be no need to go back to the ZBA when they are done for further discussion. Mr. McCreary replied that they could set it up this way as a condition of the certificate of occupancy. A letter can go to the building inspector saying the sound testing was good, and the board will get a copy for the record. Mr. McCreary went on to state that he looks at this as a mitigative action for sound for this application. Chairman Everett then asked that there be some type of certification for the board as to the agreed limiter level based upon the protocol and that this number ultimately gets incorporated into the final approval. He wants to know what the number is on the limiter so that the code enforcement officer (CEO) is going to be the one responsible for enforcing that number. He would like to believe that a self-executing document would be an easier way to proceed.

With regard to the limiter, Mr. McCreary stated that he knows they exist, but he believes them to be a solid state device, so he doesn't think that there is going to be a visible thing that one can see, "You can turn the sound system up to 10, but the limiter says no, no, seven it is." Ms. Slevin then spoke. She stated that what is contemplated as well, and it is part of the protocol, is that there will be a confirmation of the calibration annually. They are suggesting that should be done at the beginning of each season so that was agreed upon and that was tuned in for the first season, each year that will be confirmed that the same limit is in place. Chairman Everett asked if the calibration process was set forth in the Schedule "B" handout and Mr. Kahn replied yes. Attorney Rappleyea then spoke that the self-executing style that has been talked about is kind of what they have been aiming for. He and Ms. Slevin have been working on conditions and language to address the testing and that it would continue until they reach that ambient level at the property lines. Attorney Rappleyea did state that he hadn't put that the CEO contingency in there but said it can be easily changed. Chairman Everett then asked the town attorney if he and Ms. Slevin were going to revise the document together and then send the ZBA a red line of it so they can see what the changes are given the fact that the document had only been received that evening. Attorney Rappleyea apologized for the delay in not sending the document ahead of time. Mr. Khosrova stated that it wouldn't have mattered since they had to make changes anyway. Mr. Everett confirmed again with Mr. McCreary and the town attorney that the board would receive the red line document of the commissioning protocol.

Mr. Leary asked for further clarification on the limiter and how it will work regardless of the type of performance going on. Mr. Kahn confirmed that it will keep to the level once the level is established. Chairman Everett asked if there are performances they anticipate occurring that would be non-amplified that would be higher than 85 outside of the building. Mr. Kahn replied no. Mr. Khosrova asked if a movie playing would be amplified and the reply was yes. Questions ensued about non-amplified performances such as many drums, etc. (Please refer to pages 47 through 53 of the M-F Reporting Transcript 042315 ChathamZBA.txt for entire dialogue.)

Mr. Kahn ended up explaining that there are so many variables and this was how they came up with the protocol that they did because they can control that. They are trying to create something that is enforceable, that's measurable and repeatable. Ms. Slevin stated that this also covers a vast majority of

If that's not done, at 30 days he then refers it to me. And then I send the same letter saying, you've got 10 days to clean it up. And if you don't, then we're going to bring it to the town board and we're going to bring you into court. So you basically get two warnings before it gets to the town board, and then they say okay." Mr. Khosrova asked for clarification and Atty. Rappleyea replied that the CEO will issue a warning the first time there is a violation, the second time it gets referred to the town attorney who will send a letter and then it will go to the town board. Mr. Khosrova confirmed with him that this is a "leeway" and there is nothing that can really be done about it with Atty. Rappleyea stating that they are not "really an enforcement board."

Chairman Everett asked that when they figure what the dB level is for the limiter would it be possible for the town board to develop this level on this property as a law, which then would be subject to the enforcement by the sheriff or state police. Atty. Rappleyea replied they could. Ms. Slevin wondered why this was necessary. Chairman Everett replied that the police response is instantaneous enforcement and they are witnessing it, whereas the CEO won't typically respond for three or four days. Mr. Khosrova addressed Ms. Slevin that there have been complaints from the public but that there hasn't been to confirm that these complaints were valid, so we are trying to find a way to confirm it.

Chairman Everett asked the town attorney if the town has a reasonable noise standard. Atty. Rappleyea replied that there is but it is quite vague. The town is currently working on a new zoning law that will include a noise law but it's a lengthy process. He said that if the ZBA feels there should be a law that is specific to a parcel or parcels or a particular project then they should send that to the town board to get it to that committee to get it into law. He also stated that it will take a while, it's not instantaneous. Mr. Khosrova asked the town attorney if there was a dBA level in a residential area and someone who comes for a special permit would have to get a variance or if the ZBA was even allowed to issue one. Atty. Rappleyea replied that it could probably be a use variance, it wouldn't be an area variance.

Ms. Slevin spoke that with respect to enforcement, they would suggest to the board that the system that is in place for warnings are appropriate...beyond that it is treating the project in a way that is really significantly different than any other project and they would strongly object to implementing that kind of process. Chairman Everett responded that the town doesn't have any other projects like this which is why they are kind of treating this differently based on the history of it. Mr. Khosrova stated that hoped the town could check into PS 21 paying the Village whatever it would cost to hire their police as enforcement. Chairman Everett asked if there had to be a law for this to happen and Mr. Khosrova responded not if the town hires them. Ms. Slevin responded that they have come a long way to accommodate the board's requests especially by reducing the dBA to 85. They believe that we will be able to comply with the standards they have agreed to as the board has asked and would hope that the board would have the same level of trust in the project. She went on to say that if there are instances of violation, then it should be treated the same way as other applicants within the town. Mr. Khosrova said if the shows go later than 11:30 PM there's not going to be any instances in the town or anywhere else because no one else has been allowed to go that late in a residential area. Mr. Henkel stated that it's to PS21's advantage to have this process in place referring that they have been before the ZBA many times and it's been a "he said she said" scenario. To have a documented process in place is to everybody's advantage. Mr. Leary believes they should adjust the time level if there are legitimate complaints. Mr. Jablonka stated there has to be clearly fined mechanisms to investigate the complaints in a timely fashion. Attorney Rappleyea responded that if we get to a point and we are in front of that judge and the permit gets revoked, the applicant goes back to the ZBA and modifies the application.

(Please refer to pages 70 through 80 of the M-F Reporting Transcript 042315 ChathamZBA.txt for entire dialogue.)

people stay in their seats. (Please refer to pages 96 through 98 of the M-F Reporting Transcript 042315 ChathamZBA.txt for entire dialogue.)

Chairman Everett decided that it would be beneficial to go through each item on the conditions draft to discuss potential changes as necessary. (Please refer to pages 99 through 139 of the M-F Reporting Transcript 042315 ChathamZBA.txt for entire dialogue.)

Chairman Everett summed up the proposed document by stating that it sounds like they have tried to memorialize from all prior approvals the conditions in there. He asked if they can add sort of a final condition that basically says, this approval super cedes any and all prior approvals and just have one document that they can work off of. Atty. Rappleyea replied yes. The chairman asked if the town engineer or attorney had anything else to add. The response was no. Mr. Henkel inquired as to when the new version of the document would be ready and the response was ten days. Chairman Everett then stated they are waiting on county approval, so they should have that before the next meeting and this is the only thing preventing them from moving forward at this point.

Chairman Everett then allowed Mr. Lasky and other neighbors to speak. (Please refer to pages 140 through 177 of the M-F Reporting Transcript 042315 ChathamZBA.txt for entire dialogue.) At the end of comments, Mr. Khosrova stressed to the town attorney that some kind of enforcement is important. He would try to make the next town meeting. Atty. Rappleyea replied he would do his best.

At this point, Chairman Everett offered his viewpoint on the SEQRA. He feels that the applicant has addressed all the environmental issues. He doesn't think there are any potentially significant environmental issues that haven't been addressed and mitigated. He is in favor of issuing a negative declaration on this. He stated he didn't know how the other board members felt, but if they want to go in that direction, then he would say that they need to give some direction to either Mr. McCreary or Atty. Rappleyea to actually prepare a draft of that document so they can review it at the next meeting. All members were in agreement with this. Chairman Everett asked the town attorney to work it out with the town engineer.

Chairman Everett asked for a motion to adjourn the meeting. Mr. Leary made the motion with a second from Mr. Jablonka. All were in favor and the meeting was adjourned at 9:13 PM.

May 15, 2015

A handwritten signature in black ink, appearing to be 'David Everett', written over a horizontal line.

David Everett, ZBA Chairman

Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: APR 23, 2015

ZONING ~~PLANNING~~ BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

NAME	Address	email
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TERAY Laskey CHATHAM, NY
 Trice Laskey CHATHAM, NY
 Mary Elizabeth Alexi
 Nicholas Vamvas
 David Kahn
 FIRM STOLLEN WHO LOST IT
 Judy Grunberg Valatie
 Kimberly Costigan 3055 Rt 66 Chatham
 Mark Jackson

**Town of Chatham
Meeting Minutes May 28, 2015**

**Zoning Board of Appeals
FINAL Copy**

Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
Robert Leary
Jeffrey Lick
JP Henkel
Adrian Ooms

Public Present: Nicholas Vamvas, PE Crawford & Assoc., David Kahn, MaryBeth Slevin, Judy Grunberg, Evan Stoller, Terry Lasky, Tricia Lasky, John Wapner, Cynthia Bobsiene, Jose Ramirez, Heather Uhlar, Linda Ziskind, Susan Davies, Joshua Dunham Mark Smith

Excused: Kary Jablonka

George Schmitt, PE, Crawford & Associates
Tal Rappleyea, Town Attorney
Brenda Mareello, Stenographer, MF Reporting

The Pledge of Allegiance was recited and the meeting was called to order at 7:01 PM by Chairman David Everett. A motion to accept the minutes was made by Deputy Chair Khosrova with a second received from ZBA member Lick. All members were in favor and the motion was carried.

Item # 1 Public Hearing for John Wapner & Cynthia Bobsiene, 231 Thomas Rd., Chatham, NY, seeking An Interpretation of the Zoning Law or Zoning Map

A motion to open the public hearing was made by Chairman Everett and seconded by Mr. Khosrova. Chairman Everett asked the John and Cindy Wapner for a review of the issue. Mr. Wapner stated that he received a notice from Code Enforcement Officer, Walt Simonsmeier, that a complaint had come to the Building Department that Mr. Wapner was conducting a business at their residence. Mr. Wapner explained that Eli Armstrong, who works as the tennis pro at the Old Chatham Tennis Club, was giving lessons to family, friends and others on the Wapners private tennis court at their residence. Mr. Armstrong goes to their house several times per week. Mr. Wapner said they do not receive compensation for this. He stated that there has been a rumor that has a business relationship with the club, but he said that is not true. Chairman Everett asked the ZBA board for questions. Mr. Leary asked if Mr. Armstrong gets paid and the reply from Mr. Wapner was that Mr. Armstrong gets paid from the people taking lessons. The board went on to discuss the definitions of use. Mrs. Wapner feels that this didn't fit the definition of a home business. Mr. Khosrova explained the concern is that if there are only a couple of people that is minor but if you have more than that and people are parking on the roads then you have a different situation. The Town Attorney, Mr. Rappleyea, asked if this is: a.) a home occupation or b.) some other form of business that requires a site plan review. Chairman Everett questioned if it could be a home occupation and then recited the definition. Mr. Khosrova read town code §180-29 and referred to previous applications. Is this an accessory use? Mr. Wapner referred to the Wings, of Old Chatham, who appeared before the CZBA in January and who were told their request to hold small chamber music events in their home wouldn't be a zoning issue. There was no zoning issue that was determined according to the ZBA board. Mr. Khosrova stated he didn't want to set a precedent. Chairman Everett feels this might be an accessory use. He read the definition. Atty. Rappleyea then said the focus on the intensity is where you can draw your distinction. He asked how many students the tennis instructor teaches. Mr. Armstrong, who was in the audience, responded that he doesn't teach kids, he teaches adults. The most he teaches at one time is six adults approximately three times per week. Mr. Khosrova asked if there would ever be a need to have more than six players at the Wapners and the reply was that six would be the maximum. Mrs. Uhlar spoke up as a neighbor who lives across from the Wapners and commented that there is no impact on the surrounding

neighbors with regard to the lessons taking place. Mr. Lasky, a Chatham resident, spoke up and said the fact that this came up is silly and asked the board if he had to submit a site plan to give a lesson in his home? At this point, Chairman Everett made a motion to close the public hearing. A second was received from Mr. Khosrova, the motion carried. Mr. Wapner expressed his concern with this issue siting the letter that he received from the town and that there was no documentation of the complaint when he went to foil it. Chairman Everett explained to him that it is not a ZBA issue. They are here to review decisions made by the town CEO. He told Mr. Wapner that if he has a complaint to take it up with Mr. Simonsmeier or the Town Board. It was eventually determined that since the Owners do not receive compensation of any kind, the use does not fit the Home Occupation definition. Due to the minor and incidental nature of the use, there are no signs advertising the activity, the ZBA determines that in this case-by-case analysis, the use is an accessory use as that term defined in the Zoning Law and therefore is a permitted use without the need for a Site Plan Review. Since the within application is an Interpretation of zoning law, the ZBA determined that it is exempt from SEQRA as a Type 2 action. If there is an increase of intensity of the use a Site Plan Review may be required if it is determined that the use has changed from an accessory use to a commercial activity. Chairman Everett motioned deem this an accessory use. Mr. Khosrova seconded. All board members were in favor and the motion carried.

Item #2 For informational purposes only: an Application from American Tower Co. ASA Networks seeking a Special Use Permit to place Wi-Fi equipment on tower at 181 Harmon Heights Rd., Chatham, NY 12037.

Jose Ramirez, representative for ASA, presented to the ZBA. He explained that this is a startup company serving some of the Columbia County area and they supply broadband and high internet access. He showed a radio that they put on the cell tower located at 181 Harmon Heights. He explained he hasn't needed a permit in other places. Mr. Ramirez passed around the picture of the cabinet size 36 x 36 that would be constructed there are two of them and attached to the current tower. He explained the conduit goes under the ground. Approval is needed from the ZBA to get permissions from American tower to proceed. Mr. Leary asked what area the broadband would cover. Mr. Ramirez replied that it will depend on how far they can go and thinks it may be two to three miles. Mr. Henkel asked where on the post the equipment would be located and Mr. Ramirez indicated on the diagram. Chairman Everett asked the town attorney if this requires a site plan review and special use permit. Atty. Rappleyea replied yes. Mr. Ramirez said there is no license and it is WiFi. It doesn't fall under the FCC. Mr. Leary stated that it is a radio frequency signal. The board discussed town code. The signal is comparable to that of a garage door, cell phone or microwave, not UHF but wireless. Mr. Khosrova explained that the ZBA procedure is a public hearing which we can do next month and site plan approval. Mr. Ramirez is trying to get this in sooner due to their investors. Mr. Khosrova asked how far the transmitter would reach. Mr. Ramirez replied again that it would be two to three miles maximum. He stated that the site is already built and there is no need to make a new one. Chairman Everett said that the board will need to see where everything will go. According to code 180-22.1E accessory structure, it is not a building. Mr. Rappleyea said that all of B2 of the code are applicable: 2 a b c d e. Mr. Khosrova asked if they received permission from the owner of the tower and Mr. Ramirez replied yes. He distributed the scope of work to the board. Mr. Everett prefers a site plan they can approve. He asked if there are other structures there on the property and Mr. Ramirez showed him other panels that are there. Atty. Rappleyea thinks it's exempt under b, c, d 180-22.1 and that doesn't include any new accessory structures other than those clearly indicated on the diagram. Chairman Everett feels it should be done by a professional engineer and it's constructed with the site plan as opposed to a hand drawn sketch. He said they can waive the public hearing. Mr. Henkel says he believes that paragraph 2 is written for this this specific thing. Mr. Khosrova asked if the original cell tower

application called for additional expansion. Mr. Henkel didn't believe a site plan was necessary, although he did agree that the board doesn't accept a drawing that is handwritten. The town engineer, George Schmitt, stated that the original approval of the tower plan should show future additions. In his opinion, what could happen is that they would have had these panel's conduits showing on the original. If the board is comfortable with it the panel will be installed according to regulations that apply...it's already on file and already approved. Chairman Everett explained the approval was done a long time ago and with one tower. Mr. Schmitt replied that this panel is much smaller and it's one more panel on an existing shed. Chairman Everett stated again that he wants to see the drawing done professionally. The town engineer replied there is either a full on site plan or to start over. Mr. Henkel moved that they waive the site plan, with a second from Mr. Lick, however a motion hadn't been made on the other issues. According to Mr. Henkel, Section 180-22.1B2 was written for such a proposal as this. Atty. Rappleyea recommended that the board amend the special use permit. Mr. Lick asked Mr. Khosrova if he thought there was a safety concern. The reply was no but he wants to follow the law. Atty. Rappleyea said this would be exempt from SEQRA review. Mr. Khosrova asked the town attorney if it was ok that this was not an accessory structure and his reply was yes. The board revisited the motion by Mr. Henkel earlier to waive the site plan. Ayes on the motion were received from Mr. Henkel and Mr. Ooms with Nays received from Mr. Leary, Mr. Khosrova, Mr. Lick and Chairman Everett. The Chairman then asked if the board was good with the waiver of all the other issues and the reply was yes. He asked Mr. Ramirez to put together a real site plan by ten days before the next meeting. Mr. Henkel explained that the engineer is needed. Mr. Khosrova motioned to waive the public hearing and exempt as a Type II action to SEQR. Mr. Leary seconded the motion. All board members were in favor and the motion carried. Notice of action is needed for the applicant and will be sent to them by Atty. Rappleyea.

Item #3 Questaterra/PS 21 request to amend Special Use Permit

Chairman Everett addressed PS 21 representatives, Nicholas Vamvas of Crawford Associates and MaryBeth Slevin, Attorney, that there were six documents that needed to be discussed. First item was the recommendation of approval from the Columbia County Planning Board. He asked if they and the ZBA members had a chance to review it. The reply was yes. The next documents were comments from Morris Associates and responses from Crawford and Associates. Chairman Everett asked if George Schmitt of Morris if he had reviewed them and if he was good with the responses from Crawford. Mr. Schmitt replied that he had reviewed them and is okay with them as long as the CZBA is okay with them. The Chairman asked the ZBA members if they had any issues with Crawford's responses and the board replied no. He then asked Mr. Vamvas if the EAF changes had been made and the reply was yes, but Mr. Vamvas stated that the planning board change on the lighting had not been made as they still have to address the planning board.

The Chairman asked Ms. Slevin if she received a copy of the amended finding statement and if she had a chance to review it. She replied she did and she provided her comments of it to the town attorney. He asked Mr. Vamvas to review the changes with the EAF and to provide the signed copy of it, which he did. Mr. Vamvas explained that Mr. Schmitt had sent a comment letter on behalf of Morris Associates last week and that Crawford had sent responses. He said there are two changes to the EAF: Section D, number 2 on page 8, question M, part I. The EAF they had sent in February had to be revised to make the version provided now congruent with the noise protocol. Then on Question N, Part I, they revised that to concur with the small change they made to the lighting plan that they had provided to the planning board. Mr. Vamvas explained they added wall-mount fixtures on the exterior of the building on the west and north side. Mr. Schmitt had reviewed this as part of the process of the planning board and noticed the difference so Crawford made that change. Mr. Khosrova had a question about item M-I regarding "construction" asking if it had been changed or should be changed. Mr. Vamvas did not believe the original EAF referred to "construction" noise.

Paul McCreary of Morris Associates had Crawford add the construction noise as well as the operational. The original document did not refer to construction noise, so they made that change and that it agreed with the noise protocol. Mr. Khosrova wanted clarification regarding ambient levels stating that he thought the discussions over the last several months was that the noise would not go above 85 dBA and in fact thought it would be below ambient. He said he was surprised to see that it is the same original language that they had. Mr. Vamvas replied that it wasn't the original language. Originally they were following DEC protocol, no more than 6 decibels above ambient. He wasn't sure how it got misconstrued but he stated he knew the discussion the last meeting that the board was expecting them to maintain below ambient levels at the property line. Mr. Khosrova asked if this document should reflect this. Mr. Vamvas replied that the noise protocol was revised to allow for the five decibels above ambient. Mr. Leary said that they (the board) never approved that. At this point, Chairman Everett suggested they switch the documents, leaving the EAF for discussion of the noise protocol and come back to the EAF after. He asked the board if they had read the noise protocol and Mr. Khosrova stated he hadn't had a chance to read it yet. Ms. Slevin explained the noise protocol, dated May 28th, and that the engineers, Mr. Vamvas, Mr. Kahn, and Mr. Schmitt had an opportunity to talk about the protocol and to reach a consensus on what an appropriate protocol would be based on the agreement that the limit of sound would be 85 dBA ten feet outside the pavilion. She believed that this is what drives the process, the absolute limit of the noise ten feet outside the pavilion. Mr. Khosrova replied that this was not his understanding of what should be driving this but couldn't speak for the board. His understanding of what would be driving is that it would be below ambient at the property line. Ms. Slevin answered that it can't be below ambient at the property line because as soon as anything is added, even another cricket, ambient changes. She didn't want to speak for the engineers, but this was important to understand. Mr. Schmitt then went on to explain how they determined ambient and how it will be tested (Please refer to draft Transcript May 28, 2015, M-F Reporting, Inc. page 13 through 19).

Chairman Everett then asked who on the board had read the revised noise protocol. Everyone had either read it or reviewed it quickly. He asked they should take the time to review it. Mr. Khosrova stated that he doesn't think it's what they agreed to. As a board they dismissed the DEC, they did not want to work with them and let the applicant know this months ago. So, he was surprised to read that it was back in the protocol. Mr. Khosrova went on to say although several board members didn't like the hours, he was personally okay with it because he had been assured by Mr. McCreary of Morris Associates, that noise was not going to exceed ambient. He didn't understand how there could be a miscommunication and felt that now there was a new engineer (Mr. Schmitt) on the project who was then convinced to go back to DEC. Mr. Khosrova stated that it's not what he believed the board agreed to. Ms. Slevin deferred to Mr. Khan to explain the ambient level and DEC policy (Please refer to draft Transcript May 28, 2015, M-F Reporting, Inc. page 22 through 38.)

Chairman Everett asked for clarification of language with regard to "other events" at PS 21 referring to the statement, "No event or amplified activity shall take place either partially or entirely outside of the permanent structure. All event seating shall be inside." He asked if they needed to distinguish between events and activities so they don't have issues with code enforcement. Ms. Slevin explained they were trying to distinguish between performances or contracted activities where there would be amplified music. She said they are just trying to preserve the right to do other types of activities that don't involve performances but are that are part of the community structure of the facility. Mr. Schmitt explained that in the noise protocol they stipulate sound and that both amplified and un-amplified noise is included. The board asked how this would be enforced. Mr. Vamvas replied that it's subject to the same compliance. If there is a complaint, then the code enforcement officer is called. Ms. Slevin explained that part of the commissioning process will test unamplified sound. So it won't just look at the pink noise for the amplified sound, it will also go

through a process that will look at unamplified sound. Mr. Khosrova wanted to know if a complaint is made how the code enforcement officer will know whether or not they are in compliance. Will he be going to the property line with the noise meter and at what level would he be testing? Mr. Vamvas answered that the testing would be at the ten foot perimeter, if any unamplified sound is going to exceed that 85 decibel level then that would be an instance in which they're not complying with the conditions. Ms. Slevin confirmed that this is why they go back to the perimeter measurement, because that's the one that's an absolute number. Mr. Henkel asked what if it is an unamplified noise being generated not in the pavilion, where does he test? Ms. Slevin replied that they are not going to have performances outside of the pavilion, whether it's amplified or not. Mr. Khosrova agreed and that it is the walking and hiking that will be outside. All the events have to be in the pavilion and they have agreed to that. Chairman Everett read from the list of conditions document #29. He said this relates to the amplified and unamplified sound and it's tied to the ambient noise level that's set forth here in the protocol. In his opinion, the way it gets enforced is that the code enforcement officer goes out with the noise monitor and monitors those locations. And if it's above five, then it will be a violation. If it's below five it will be good to go. Mr. Vamvas asked to clarify that they really need the compliance point to be their ten-foot perimeter, because that's controllable. Chairman Everett replied, "But this says the property line. That's what it is. And isn't the five dBA triggered at the property line?" Mr. Vamvas replied that this was correct. But when talking about measuring in the case that there may be a complaint, they're going to need to use that ten foot perimeter because it's controllable. The limiter is set so that they're getting 85 dBA at that ten foot perimeter. He said that there could be some other noise generated at the property line that could cause the level to be more than five decibels above ambient that would have nothing to do with PS 21. Chairman Everett wanted to know what happens if there are 500 Girl Scouts on the property, not the pavilion, and they are making noise...the limiter is irrelevant in this situation. Mr. Leary wanted to know if the limiter would be able to log in a time and decibel limit, so the code enforcement officer would know if a complaint was legitimate especially if he can't get answer the complaint right away. Mr. Kahn responded that the limiter does not have that capability. Mr. Leary wanted to know then what good would it do to call the code enforcement officer...how would one prove anything? The board questioned the town attorney about enforcement. Atty. Rappleyea explained that he went to the town board with this question of enforcement and told them the CZBA is requesting that there be additional ways of enforcement with respect to complaints of noise. He said the Town Board took it under advisement. Mr. Leary stated that there were about ten questions under advisement still pending. Chairman Everett asked if there were any other final questions on the noise protocol. The response was no.

The board then turned to the EAF. There was confusion of who had received the copies of it. Some documents were emailed and there were other documents that came in at different times. It was determined by the board that the ZBA clerk is to receive all documents in a timely manner at least ten days before. The clerk will make copies as needed (or the applicant will supply the necessary copies) and mail them to the board members not less than ten days before the next board meeting. Board members can also request that the documents be sent electronically.

The board then reviewed the EAF question by question. (Please refer to Transcript May 28, 2015 of M-F Reporting, Inc. pages 66 thru 97.)

Chairman Everett then asked if the applicant had reviewed the resolution. Both the town attorney and Ms. Slevin replied they had. Atty. Rappleyea stated that it tracks the procedural history. The board took a five minute break to make more copies of the resolution and review it. Mr. Khosrova explained that the protocol runs a half hour, and the change that they made in number 3 should be at least half hour of the operation on Friday and Saturday, which is 11:00 to 11:30 rather than 10:30 to 11:00 and they're in agreement. So number 3 in the protocol should change 10:30 to 11:00

and 11:00 to 11:30. Ms. Slevin had another issue to discuss. She stated that following up on the discussion that Mr. Vamvas had reviewed with the board before about having the point for enforcement ten feet outside the perimeter of the building, because that's the constant that we can control. Number 29 of the conditions we believe should be revised to reflect that. Atty. Rappleyea asked if it should be 85 dBA and Ms. Slevin replied that it is whatever the ultimate number is because it may not be 85. It may be lower than that. Chairman Everett expressed concern that he thought the whole protocol was tied to what the noise level is going to be at the property line. Mr. Khosrova was concerned as well, but that for enforcement purposes, what the applicant did is they said they want to hit now it's five dBA above based on the protocol. Then they are going to have this number, 85, but it may not be, it may be lower. Ms. Slevin replied that it may be more than. Mr. Khosrova stated that once a number is established it is much easier to enforce. (Please refer to Transcript May 28, 2015 of M-F Reporting, Inc. pages 102 thru 111.) After much discussion, it was determined that the Schedule B would become Schedule A. Chairman Everett requested a motion to approve the amended findings statement. Mr. Leary seconded the motion and all board members were in favor and the motion was carried.

Chairman Everett then referenced the resolution. He asked the town attorney if there were any changes. He confirmed that the language regarding ten feet for the perimeter was the same as the engineer's and that the date needed to be changed from April. Chairman Everett asked if a developer's agreement had been worked on. Ms. Slevin replied that the grant was circulated a month ago. Both Atty. Rappleyea and Ms. Slevin were in agreement with the current draft, which was attached as Schedule C. Chairman Everett wanted to be sure both parties were okay with this and they were. He asked if everyone else had a chance to look at the resolution, the reply was yes. Chairman Everett then made a motion to approve the resolution with the conditions as amended and asked that the town attorney provide the board with the updated copies of all of the documents that they had modified at this meeting. Atty. Rappleyea stated that the copies would be available within five days according to the statute. Chairman Everett motioned to pass the resolution document. Mr. Lick seconded the motion and all members were in favor and the motion was carried.

The Chairman thanked everyone for their time and help through this lengthy process and wished them luck. A motion to adjourn the meeting was made by Chairman Everett and seconded by Mr. Lick. The meeting was adjourned at 9:47 PM.

June 19, 2015

David Everett, ZBA Chairman

Respectfully submitted by
Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: 5/28/15

ZONING BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

NAME

ADDRESS

EMAIL

John Wapner	231 Thomas Rd	Wapner@FairPoint.net
Arthur Bobseine	231 " "	C Bobseine@FairPoint.net
FERRY Lasky	RT 66 CHATHAM	
PATRICIA Lasky	" "	
Jose Macinzel	1452 1st Ave NY, NY	jmacinzel@csanetworks.com

Debra Ullman	263 Thomas Rd	ullman@201.com
Amber Johnson	51 Thomas Rd	LINDA2ISKIND@GMAIL.COM
MARK SMITH	PS21 CONSULTANT	

Mary Elizabeth Stevin	1824 Weston Ave	mstevin@ssr-legal.com
EWALD STOLLER	WIRW LEBANON	STOLLERWORKS@GMAIL.COM

DAVID HAHN	NYC	
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Nicholas Vamvas	Crawford And Associates	
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Joshua Dunham	New Rochelle	jdunham@ad-ny.com
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**Town of Chatham
Meeting Minutes June 25, 2015**

**Zoning Board of Appeals
Draft Copy**

FINAL

ZBA Members Present:
David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
JP Henkel
Robert Leary
Kary Jablonka
Jeffrey Lick
Adrian Ooms

Public Present: Jose Martinez, Lance Kriz
of ASA Networks

The meeting was called to order at 7:00 PM and the Pledge recited.

The first agenda item was approval of minutes. Mr. Khosrova provided a couple of edits. Mr. Khosrova moved that the minutes be approved as amended, Mr. Leary seconded and the minutes were approved.

The only agenda item was a continuation of the application by ASA Networks. Jose Martinez and Lance Kriz were present to represent ASA Networks.

The committee reviewed the site plan that had been requested and subsequently submitted. There were no questions or comments on the site plan since they had been addressed the previous month.

Chairman Dave Everett noted that the application was exempt from SEQRA review because the use was for less than 4000 square feet. Chairman Everett moved that the application be approved and that all other requirements under the Town Code Section 180-22.1 be waived. Mr. Jablonka seconded the motion and it was unanimously approved.

Meeting adjourned at 7:08 p.m. under a motion from Mr. Leary, seconded by Mr. Jablonka.

Mitchell Khosrova 9/22/15
Chairman ~~David Everett~~ *Mitchell Khosrova*

Respectfully submitted,
Jeffrey Lick

**Town of Chatham
Meeting Minutes September 24, 2015**

**Zoning Board of Appeals
FINAL Copy**

ZBA Members Present:

Mitchell Khosrova, Deputy Chairman
JP Henkel
Robert Leary
Kary Jablonka
Jeffrey Lick
Adrian Ooms

Public Present: David Weinraub, John Hofelich

Excused: David Everett, Chairman

The meeting was called to order at 7:00 PM and the Pledge of Allegiance was recited. Deputy Chairman Khosrova stated that Chairman Everett would not be present for the meeting. Motion to approve minutes from the June 25th meeting was made by Mr. Ooms and was seconded by Mr. Lick. All members were in favor and the motion was carried.

Item #1 Application from Amanda and David Weinraub, 6 Pratt Road, Malden Bridge, NY 12115, seeking an area variance for an addition to an existing garage on the property.

David Weinraub, property owner, and his contractor, John Hofelich, presented their plans to the board. Deputy Chairman Khosrova stated that he knew the applicant on a professional level, but didn't feel he needed to recuse himself from this particular application.

Mr. Hofelich stated the house was built in 1800s before zoning existed. He explained the garage is near the road and referred to the map. He went on to say that the owners purchased the property and have put a lot of time and money into the house. The laundry room is currently in the basement and the owners would like to move the laundry room to a portion of the garage. The contractor explained he would close off the garage doors that face Pratt road and create access to the garage on the side of the house. They would need to add six feet toward the barn on the property. It will be six inches back and 12 feet from the middle of the road in front of the house. The board acknowledged that the setback needs to be at least 75 feet from the center of the road. The contractor said that it is currently difficult for cars to get in and out of the driveway as it exists now. The idea is to remove the two garage doors and create a single car entrance on the side of the house instead. Deputy Chairman Khosrova asked if there is anything that shows the distance to the end of the property as the survey supplied doesn't show it. He asked if they could give a document that could provide this information. Mr. Henkel stated it is clearly not any closer to the property line and believes this change would be an improvement to the property. The road is not parallel to the house and looks like it would be further back from the property line. Mr. Leary said that the road is plowed in the winter and snow goes on their property. According to the contractor, there is a drainage issue and they have found deteriorating material while working on the house. Mr. Leary suggested that they consult the town highway department when they decide to put a sidewalk in front. The drainage problem will have to be addressed especially due to the snowplowing done in winter. Mr. Henkel stated that the highway superintendent should be consulted. Mr. Hofelich said they are not increasing any drainage onto the road. Deputy Chairman Khosrova asked if it was level ground and the reply was no, it is downhill to Rt. 66. The driveway will remain a semi-circular one.

Mr. Henkel asked if they need to see a survey to see the exact setback. Deputy Chairman Khosrova would like to have survey dimensions of the property and the road and the board was in agreement with this. He stated that they need to know the property lines from the end of the barn to the end of house and property line and road. The surveyor will be able to find out where the road is. Deputy Chairman Khosrova said they can schedule a public hearing for next month providing the survey gets done. The applicant was given documentation of notification to neighbors. A public hearing will be set for the October meeting.

A motion to adjourn the meeting was made by Mr. Leary and seconded by Mr. Lick. All members were in favor and the motion carried to adjourn at 7:31 PM.

Mitchell Khosrova, Deputy Chairman

Respectfully submitted by
Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: 9/24/15

ZONING BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

NAME

ADDRESS

EMAIL

John H. Telch

9. Circle Drive

JCH @ Amenet.net

David Weinraub

6 Pratt Rd.

lweinraub@brownweinraub.com

**Town of Chatham
Meeting Minutes October 22, 2015**

**Zoning Board of Appeals
Final Copy**

ZBA Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
JP Henkel
Robert Leary
Kary Jablonka
Jeffrey Lick
Adrian Ooms

Public Present: David & Amanda Weinraub,
John Hofelich

The Pledge of Allegiance was recited at 7:00 PM. Chairman Everett called the meeting to order. A motion to approve the September meeting minutes was made by Mr. Lick and seconded by Mr. Jablonka. Motion was carried.

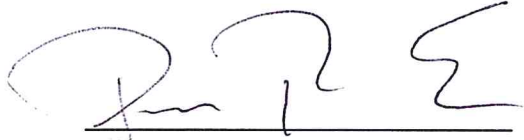
Item #1 Application from Amanda and David Weinraub, 6 Pratt Road, Malden Bridge, NY 12115, seeking an area variance for an addition to an existing garage on the property.

The Weinraub property survey was presented to the ZBA. The property line was plotted. Chairman Everett asked for a review of the proposal since he was not in attendance at the last meeting in September. The contractor, Mr. Hofelich, said they are looking to bump out the end of the garage to retain a 24 ft. distance to continue use of the garage and move the doors to the side. The existing garage doors were falling down and they were able to close those off with CEO Simonsmeier's approval. Mr. Hofelich indicated where the well and steps were located. Mr. Leary said it was his understanding of the sidewalk is that the highway superintendent would have to issue a construction permit. Mr. Hofelich said he spoke with Mr. Rickert. The intention for the sidewalk is to keep feet clean and it is way of entrance and exit to the house. There is plenty of room for a three foot sidewalk. Chairman Everett wanted to know if Mr. Hofelich asked Mr. Rickert about the trucks snowplowing and trucks turning around on this property. Mr. Hofelich responded that the trucks continue through now and will not be turning around on their property. He stated that Mr. Rickert has only one rule with regard to construction of a new sidewalk: if the sidewalk was to be higher than the road, Mr. Rickert would require some sort of a curb installed. In his understanding, Mr. Hofelich said they will cross that bridge when they get to it. The application is only for the garage extension at this time. He went on to say that the grade drainage is difficult on that road and anything they do will make it better. He indicated on the original photo how far the concrete comes out and explained that they removed it because it was a problem. The entrance to the garage will be much safer now.

Chairman Everett made a motion to open the public hearing, which was seconded by Deputy Chair Khosrova. All members were in favor. There were no comments from the audience. Chairman Everett asked for a motion to close the public hearing. Deputy Chair Khosrova made the motion with a second received from Mr. Leary.

For the record, Chairman Everett stated that this is exempt from SEQR review as a side lot line variance for a single family dwelling and exempt from referral to the county for same reason because of the

town's agreement with the county. It is within 500 ft. from Route 66. He asked for a motion which was received from Mr. Lick, to grant a variance of up to 58 feet. A second was received from Mr. Khosrova. All board members were in favor and the motion to grant the variance was carried. Mr. Ooms made a motion to adjourn the meeting with a second received from Mr. Khosrova. The meeting was adjourned at 7:14 pm.

A handwritten signature in dark ink, appearing to be 'David Everett', written over a horizontal line.

David Everett, ZBA Chairman

Respectfully submitted

Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: 10/22/15

ZONING BOARD

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

John Hofelich

David Weinraub

Amanda Weinraub.

**Town of Chatham
Meeting Minutes December 1, 2015**

**Zoning Board of Appeals
Draft Copy**

ZBA Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
Robert Leary
Adrian Ooms
Jeffrey Lick
JP Henkel
Kary Jablonka

Public Present: Terry Moag, Cris Schrader of
Seed Engineering

The meeting was called to order at 7 PM and the Pledge of Allegiance was recited. Mr. Khosrova made a motion to accept the meeting minutes from the October 22 meeting. Mr. Leary seconded, all members were in favor and the motion was carried.

1.) Application for an Area Variance for Terrance Moag, 391 Riders Mills Rd, Chatham, NY 12037, to meet the setback requirement for the drain field of a septic system for a new house.

Deputy Chair Khosrova recused himself for the record from the application at this time.

Terry Moag, owner of the property, explained that he is building a house. He referred to the narrative he submitted with his application for the septic design and said it was designed according to the NYS Health Department code. He explained he walked the property with the health department and they deemed it could be built. With regard to the septic that would be installed, he went by the state code not realizing the Town of Chatham had a different code. The county approved of his plan and at this time Mr. Moag introduced Cris Shrader, the engineer who designed the septic. The leach field will need the variance. Mr. Moag indicated that one neighbor is supportive, but the other is not. The county engineer approved the design. He explained that the location he is requesting for the setback is his only option. He has a lot of money tied up in the project.

Chairman Everett asked if Mr. Moag started construction on the house. Mr. Moag replied that the building permit was issued so he was able to construct the driveway and the foundation is in. Mr. Moag was asked by the chairman if the County had any other requirements. Mr. Schrader, the engineer for the project said the County has signed off on it. They do comply with the requirement of ten feet from the property line and the setbacks as well as state requirements from water bodies. Mr. Schrader addressed a letter to Mr. Simonsmeier and it complies with the 50 ft. setback because it's an enclosed raised bed filter. Chairman Everett referred to a line on the map that said they looks like they would be beyond 100 foot from the stream and asked for clarification on the map of the stream location and where the setback is. Mr. Schrader explained there are two portions to the septic system design. First is the raised sand filter which is just beyond the fifty foot and is an enclosed line sand filter, it doesn't have to comply with the 100 ft., and it actually falls under the 50ft. setback. It is in compliance according to Mr. Schrader. He explained that it then goes to the pump tank and then pumped up to the mound system and that has to be 100 ft. setback, which is why it is pushed off to the northern part of the site. He indicated on the map where the actual part of the septic is that needs approval and that it is the part that contains the sand filter. It is encroaching within 50 feet of the setback of the property line. Chairman Everett asked how far it will be from the property line. Mr. Schrader replied that it is going to be ten to fifteen feet from the

property line. They can alter the way it is going to be set up as far as multiple laterals going in one direction. Mr. Schrader said they can make it one lateral to give more of a "buffer."

Chairman Everett asked if they would need to grade any trees or clear an area that would be closer to the property line and Mr. Schrader replied that there will be a little bit of grading and only one or two trees that may need to be cleared. Mr. Schrader then indicated where the grading would start on the map for the mound system.

Chairman Everett asked if there was a rail bed or utility right of way or both. Mr. Schrader said he believed it was a utility easement and a rail bed and it is generally clear. Chairman Everett asked if the neighbor has any views from his house of Mr. Moag's property. Mr. Schrader believes that it will be a negligible view of the mound system. Chairman Everett asked if there trees that will screen Moag's house from the view from his property. Mr. Moag explained where the house is, where the old rail bed is, and where the septic is. He said that the ground soil is mostly coal so much doesn't grow there. Mr. Lick asked where his house is located on the map and in the middle of the trees.

Mr. Lick wanted more information about the mound system. Mr. Schrader showed on the map that the larger box on the map is the mound system. He explained that due to wet soil conditions by bringing in sand for usable soil to treat the effluent and by that point because the matter is already going to be pretty clean because it will be going through the sand filter first. Mr. Schrader explained that the neighbor was concerned about the environmental impact to the stream but this system is much better than a traditional system, more expensive but works well for this use. He went to explain the other box adjacent to this one on the map is a 50% expansion area in case of expansion in the future required by DOH. Mr. Lick inquired about the elevation of the Moag property with respect to the neighbor's property. Mr. Schrader showed this on the map.

Mr. Leary said that he lives on the same road and has been there to view the property. He said there is a clear view from Moag's foundation to Gruen's. Mr. Moag stated that the one story house is 800 sq. feet with a detached garage. He explained that the house is very low level because of the way it slopes off. The house is built on piers and all the neighbor will only see is the back of the house. Mr. Moag said that he spent \$15K on an architect and believes the neighbor will not see the house once more trees are planted and grown. He explained he was trying to limit the amount of aesthetic impact to the site and that the neighbor won't be able to see much of it.

Mr. Leary asked why they had to put the septic in that location and not somewhere else on the property. Mr. Schrader explained that there was no feasible technology that would have been able to accommodate the system due to the shape of the property that meets both the 50 ft. and 100 ft. setbacks. Chairman Everett said his preference would be to see the location in a place where it doesn't violate the natural habitat (the stream) and that this proposed area is the only location it can go, this area is cleared and it is an appropriate place to do it. He stated that the septic complies with the state requirements and they have those requirements to ensure environmental safety and public safety. In the past the ZBA has approved these septic setbacks in these types of situations.

Chairman Everett stated his concerns that this house could spill over the setbacks at some point and that there should be a mechanism set up so that the setbacks are staked out before construction is started so that this doesn't happen. He asked Mr. Moag if his surveyor had marked the setbacks. The response was yes. Chairman Everett wants to be sure that the foundation actually meets the building setbacks and if it's over the setback, Mr. Moag will need to return to the ZBA. Mr. Moag inquired if it would need to be at the next meeting or would it take another meeting.

Chairman Everett replied they would discuss it at the next meeting. Mr. Moag wanted to know if someone had brought this issue to them and Chairman Everett stated at that point that the ZBA had received an email from Mr. Gruen. Copies were distributed to Mr. Moag at this time. Chairman Everett wants to be sure that the setbacks are being met and that it's set and approved so there are no further issues.

Mr. Leary wanted to know how the 50 ft. issue came up. Mr. Moag replied that it came from the Mr. Gruen, who brought it to his attention. Chairman Everett said that they would require the dimensions of what's proposed for construction placed on the survey and what the survey is from the septic dimensions to the property line so the ZBA knows what variance to give Mr. Moag. Mr. VanAlstyne, the surveyor, needs to take the plan, blow it up, get the detail on there, and add the dimensions and then it will be clear as to what is granted. The chairman asked Mr. Moag if he can have this ready by the next public hearing. Mr. Moag will have to provide written notice and bring all the return receipts from notification to the neighbors. The ZBA clerk will provide Mr. Moag with this information. Chairman Everett asked if there were other questions stating he wanted to review the neighbors email.

Chairman Everett addressed the email that was received from Mr. Gruen, the neighbor to the ZBA:

1.) *Coordination of variance application with review of plans for house and garage.* Mr. Gruen is incorrect when he says the house is 2500 sq. ft. Mr. Moag responded that he is not sure what Mr. Gruen is looking at as Mr. Gruen hasn't seen the plans for the house. The foundation is 800 ft. in the main living area. He said the building plans are on file with the building inspector. The chairman asked the board clerk to obtain a copy of the building plan application and permit from the building department that shows this is a one story house and the size that Mr. Moag states that it is. Mr. Gruen is concerned that the house will extend outside the buildable area.

2.) *Insufficiency of the variance application.* If the house is smaller than it would require a smaller septic that wouldn't require a variance. It is not possible as it is a relatively small house. Mr. Gruen is concerned of the impact of the stream. The chairman said it is important to comply with the state requirements and everyone was in agreement.

a. *The application does not address the first factor of impact on the neighborhood and on neighboring property.*

Chairman Everett noted that this doesn't have to comply with SEQR because it is an area variance relating to a single family home which is a Type 2 action. Mr. Gruen's point is that it will have an adverse impact on the neighborhood, but the Chairman does not see that it will and asked the board what they thought. The building is within the setback requirements. Mr. Leary lives on the road as well but can't see it from the road.

b. *The application also does not address the feasibility of any alternatives*

Chairman Everett stated that they explored this already.

c. *It does not acknowledge that the "variance is substantial," the third factor. Here, the property is only 1.9 acres and the applicant is requesting much to squeeze a relatively large house into a very small legally permissible area.*

Chairman Everett believes it is substantial but that's not dispositive of the variance. He did think there are good reasons for it to be substantial.

d. *The application does note, with respect to the fourth factor of effect on physical or environmental*

conditions that the property contains archeological features (EAF item 12), but does not describe them.

The Chairman asked Mr. Moag is there any truth to this statement. Mr. Moag replied that he went to Hartgen Archeological Associates and DEC before he bought the property. DEC said there is no wetland and Hartgen said this is not a regulated archeological site. It is noted as potentially archeological but it is not regulated. Chairman Everett asked if Mr. Moag received a letter from them stating this information. Mr. Moag said he knows someone who works at Hartgen and thought he would have someone come in to look at the site for his own personal information and stated again that the property isn't an archeological sensitive site. Chairman Everett asked him to go on the SHPO website and download this map to show that it is not archeological sensitive so we can have this on record. Mr. Moag was asked if there any foundations on the site. Mr. VanAlstyne told Mr. Moag that there were but not near his house. Mr. Moag indicated on the map where the old Rider's Mill road was and where these foundations were. Mr. Moag said there was a big water tower there, not a depot. He went back as far as the early 1800's and asked Middlebury College, as they have the repository for the Rutland Railroad, for pictures and none could be found other than one of a shed and the water tower. Mr. Moag said there are some stone foundations. Chairman Everett asked if he knew why it was cleared where the septic is located. Mr. Moag replied that it is probably from poor soil conditions from the railroad. He stated that he grew up near a railroad and there was a lot of coal in the soil and grass didn't grow well.

Chairman Everett asked the board that if they start digging, what if they run into railroad artifacts? Mr. Moag replied that the state doesn't have anything on his property. Chairman Everett thought maybe it could be listed in the historic registry. Mr. Moag said there is nothing that precludes anyone from excavating on that site and his house doesn't interfere with anything in relation to the railroad. Mr. Moag said they dug and didn't find anything but dirt. Mr. Moag did test pits under the engineer's supervision with a pick axe. He did three test pits and was asked by the chairman to get a letter from the engineer stating that the test pits were done in the septic area and nothing was found. Chairman Everett wants to be sure there are no archeological issues they have to be concerned with. Mr. Moag will need to provide the archeological map. The board has received testimony that Mr. Moag didn't hit anything when he dug the foundation and there are three test pits with nothing found. Chairman Everett stated that if Mr. Moag can get the stone foundations put on the survey that prove they are far away from where the septic is, he then believes Mr. Gruen's issue is addressed. The board agrees that having this information is important.

Mr. Moag didn't agree with Mr. Gruen's statement that there was a pond on the property that had been filled in. Mr. Lick asked if there was a pond and Mr. Moag replied no, that it is a wet area. Mr. Moag said a local excavator did some tree clearing and when the trees were done that Mr. Gruen wrote a letter stating that they were impacting the stream. Mr. Moag stated that the area is wet in the spring and the stream runs seasonally depending on the weather. Chairman Everett asked the engineer if there is anything else to be concerned about as a wetland in the septic area and Mr. Schrader replied no.

Mr. Henkel asked how the stream is channeled with the driveway going over it. There are big rocks and an existing culvert there. It is not interfering with the septic. There are no federal wetlands on the site according to the state and federal maps. Chairman Everett stated that these issues have been addressed.

e. The applicant does state that there is no self-created hardship even though he bought the property undoubtedly aware of it being very much undersized, and began construction even though the planned sewage system quite obviously did not meet Town Law standards with respect to its location.

Chairman Everett said the hardship is created by the lot configuration more than anything else. Mr. Ooms stated that the lot size must have been approved by the town previously. Mr. Moag didn't seek to subdivide this. It is pre-existing. Chairman Everett stated that Mr. Gruen mentioned an existing well on the property but there isn't one on the survey. He referred to the one that is on Mr. Moag's plan which is proposed. Chairman Everett stated that the well driller will have to make sure the well complies with the setbacks for septic systems. Mr. Moag said Goold Drilling will be doing the work. Mr. Schrader indicated on the surveyor's map where the well will go and will comply.

Mr. Jablonka referred to the DOH requirements for the well setback requirement then isn't a concern as it meets the 50 setback

Chairman Everett asked if the applicant knew where Mr. Gruen's well is on his property. Mr. Schrader replied that it is greater than 100 ft. away. He believes it is on the other side of the house. Chairman Everett asked him to provide a letter stating this fact. Mr. Schrader will check with the code enforcement office to see if he has a record of it or to check with DOH. Mr. Henkel said that Mr. Gruen said in his letter that his well had been moved.

Mr. Henkel asked for clarification on the septic system. Mr. Schrader explained that it is a pressurized mound system. It's passing thru the enclosed sand filter and much cleaner than going into a leach field system. Chairman Everett asked for photos of where the septic and where the foundation is going.

Mr. Henkel asked if it was okay for the board to check out the site. Mr. Moag replied yes. Chairman Everett asked they are under any construction deadlines or time constraints. Mr. Moag explained that his mortgage company is an issue, he has a construction loan, and he told them that that he had to go to the Zoning Board.

The public hearing/meeting is tentatively scheduled for Tuesday, December 29th. The clerk will check to make sure the board room is free and let everyone know. The town attorney will have to prepare a resolution and the ZBA findings and determine whether or not there will be added fees (escrow) for the preparation of paperwork.

Chairman Everett asked if there were any other questions or comments. He asked that they have Peter VanAlstyne find out as soon as possible whether or not the foundation extends beyond the setback lines and if it does they will have to do an amended application for an area variance. This would need to be included in the public hearing notice.

A motion to adjourn the meeting was made by Mr. Lick and seconded by Chairman Everett. All members were in favor and the meeting adjourned at 7:58 PM.

David Everett, ZBA Chairman

Respectfully submitted by
Shari Franks, ZBA Clerk

Town of Chatham
Meeting Minutes December 29, 2015

Zoning Board of Appeals
FINAL Copy

ZBA Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
Robert Leary
Adrian Ooms
JP Henkel
Kary Jablonka
ABSENT: Jeffrey Lick

Public Present: Terry Moag, Cris Schrader of
Seed Engineering, EJ Ball,
Karen Kellogg, John Stockli,
Atty. PS 21

Marilyn Cohen, Planning Board Chair
Gail Chamberlain, PB Clerk

The meeting was called to order at 7 PM and the Pledge of Allegiance was recited. Chairman Everett asked if everyone reviewed the changes that were made to the ZBA meeting minutes dated 12/1/15. A motion to accept the minutes from the December 1st meeting was made by Mr. Leary, seconded by Chairman Everett. All members, except for Mr. Khosrova who abstained, were in favor and the motion carried. Chairman Everett called on John Stockli, Attorney representing Questaterra/PS21 to present his case.

Questaterra, LLC/PS21 Notice of Violation – Order to Remedy

Attorney John Stockli explained that he didn't believe the notice of violation was done in accordance with Town zoning law and state law. He stated it was a mistake in the way it was worded and shouldn't be a violation, which is why he is filing an appeal to the ZBA. Chairman Everett asked if the board had any questions. Mr. Henkel asked for clarification and didn't recall how this issue of enforcement was resolved. Chairman Everett stated that the new approvals of protocol for PS 21 will not go into effect until the new project is built. Mr. Stockli didn't believe that decibel limits were violated at this event. Chairman Everett said there are no facts stating this or any evidence that this was a violation of decibel limits under the protocol that is currently in effect. In his opinion he thinks they have to reverse it. Chairman Everett said that this was discussed this at the last round of approvals. The developer's agreement is established for when the new building is completed. Mr. Khosrova said based on that protocol, PS 21 has a phone number of a contact who should be called during an event if there is a violation. In this case, none of the documents presented to the board stated that such person was called. Mr. Khosrova stated that the neighbors didn't call Sam Reilly, Site Manager of PS 21, and the neighbors need to know that the protocol needs to be followed. He believed that the phone number was sent out to the neighbors. Chairman Everett requested that a note be sent to the town attorney and town board requesting that the protocol now that it is finalized, be distributed to the neighbors of PS 21. Mr. Henkel asked that if a note is sent to the Town Board, it needs to recommend contacting some of the neighbors that are living beyond 500 feet of PS 21 explaining that many of the neighbors were not notified of the public hearings because they were not 500 feet within the property. Chairman Everett said that the violation should be rescinded and a motion to do so was made by Mr. Khosrova and seconded by Mr. Ooms. All board members were in favor and the motion carried. Chairman Everett asked the ZBA clerk to notify the town board requesting that they should provide notification to the neighbors about the established protocol for PS 21.

Application for Area Variance for Terrance Moag to meet the setback requirements for the drain field of a septic system for a new house.

Chairman Everett stated that for the record Mr. Khosrova recused himself from this application.

Chairman Everett made a motion to open the public hearing. Mr. Jablonka seconded the motion. All board members were in favor and the motion carried. Mr. Moag stated that he wanted to clarify further about the foot print of the home that he is building to make sure, for the record, that the plan he presented is indeed 800 sq. ft. It has a relatively small impact on the overall lot according to him. The living space is 1256 sq. ft., second floor is a loft and is 566 sq. ft. There is storage of 156 sq. ft. The garage is 654 sq. ft. Mr. Schrader pointed out the footprint and the garage on the map. EJ Ball, Mr. Moag's builder for his house, showed the garage on the drawing. He indicated the foundation and garage, which is separate. There is an overhang but it is still within the building envelope. Chairman Everett stated that one map was sent to the board of the plan but the configuration they showed during the meeting doesn't match the original and asked for clarification. Mr. Ball explained the difference between the maps and which map was accurate. Chairman Everett asked if the cantilever is taken into account on the survey and on the septic survey. The reply was yes. Mr. Henkel said the survey just has the foundation footprint. The builder explained the surveyor's map indicates the setbacks, which are a little over two feet. Mr. Schrader explained his drawing is based on Mr. Van Alstyne's survey as well, but Mr. Van Alstyne's survey doesn't have the garage on it. Mr. Jablonka asked if the overhang is considered part of the footprint. Mr. Schrader replied yes. Chairman Everett stated that the board asked for this information to be shown on the maps and that it needs to be included on the plan/map. He explained that the cantilever and garage need to be included on the plan as "proposed" as well as show the dimensions of the setback, so that the board can verify the building falls within the setbacks. Mr. Leary asked where the rail bed was and Mr. Moag indicated where it is on the map. He asked Mr. Moag who owns it. Mr. Moag believes it's a right of way and Chairman Everett stated that Mr. Gruen says he owns it according to his letters to the ZBA. Mr. Moag said there is information making sure it's clear that there isn't a historical impact on his property.

He submitted a rendering of the landscape proposal. The landscape plan shows a row of arborvitae. Mr. Moag explained that the landscaping proposed is what was planned early on in the planning stages. It also shows a perspective from the neighbors view. The idea is for his house to not be visible at all. It was an "early on" conceptual rendering. Chairman Everett understands that the plan is conceptual but he would like to see where the arborvitae are going to go and then that can be incorporated as part of the ZBA condition of approval. Mr. Ball spoke that there is quite a bit of natural vegetation. They removed six or eight trees and there is natural vegetation to help keep the house secluded. There are some pines in there, arborvitae. Mr. Henkel said he had visited the property that day and indicated there are a lot of trees by the septic location. He asked the applicant what trees are being cut and what the plans are to mitigate the view of the septic. Mr. Schrader replied that anything that is on the footprint of the mound system will be removed but that anything outside of it will not be removed.

Mr. Schrader stated that there would be plantings on the mound system which will be covered with top soil. Mr. Ball explained that if one is standing on the neighbor's property, the system won't be seen. The grading that was provided previously is what will be seen. Mr. Henkel asked about the observation tube and if it will be on the neighbor's side. Mr. Schrader replied that it is not on the neighbor's side and will not be seen and showed on the map where it will be situated. Mr. Henkel wanted to know where the observation tube is and wanted to know what it is. Mr. Schrader explained that it is part of the mounds system to monitor what is going on with the system along with the alarm system. It is a pipe parallel to the ground of one inch PVC. Mr. Henkel asked if the pipe can be painted a color and the reply was yes.

There is a 50% expansion area if needed in the future, if one is ever needed. Chairman Everett stated that Mr. Moag would need to come back in the future for a variance if the expansion area is needed. He requested that a plan show where arborvitae will be planted so they have this for the next meeting. Mr. Henkel wants to be sure this includes where the septic is, stating that he doesn't think it will be very visible but would like to see what the applicant is proposing with reference to the lawn.

Mr. Moag stated that Mr. Van Alstyne will be able to provide a drawing with the cantilever and garage on it and on the Seed engineering drawing because he's already provided all the setbacks and the distances between all the different features on the site. Chairman Everett questioned the distances and if there is a need for other variances on Mr. Schrader's plan. He referred to his map. 1.) There will be the mound system that will need to have a variance from the corner of infrastructure to the property line. They will need to identify what the variance is and what the setback is; 2.) The buried sand filter: this is from the corner to this property line and looks less than 50 feet which needs a variance; and 3) the septic tank: It is ten feet away from the home, which is code requirement but the distance says it is four feet. Mr. Schrader said this was incorrect. It is the width of the tank according to Mr. Schrader. The setback is ten feet from the house but not labeled on the map according to Mr. Schrader. Chairman Everett stated they need this information on here. The setback is needed so it complies with the law. The chairman asked about the well on the drawing. Mr. Schrader replied that is not the well they are using, it is from the Vanalstyne survey. The well will be a newly dug well. Chairman Everett stated that they need to confirm that it meets the setback requirements and needs to be marked as proposed well. He stated that these are the three variances that need to be on the plan.

Chairman Everett asked for clarification of where the old foundations are on the map and if there is an archeological issue. There is one on the map that is marked where the septic is going. Mr. Moag explained that it was a "feature" or a rock wall. Chairman Everett requested that these be made clear as it looks like a foundation. He wants to be sure that there are not any foundations relevant to the old railroad. Mr. Schrader asked if the chairman had the copies of the letter he had submitted with his photo logs. Mr. Schrader explained the photos. Chairman Everett stated that there is a buried sand filter next to this "feature" on the map and he needs this identified. Chairman Everett said that if there is a foundation then an archeologist will have to evaluate it. Regarding one of the "rock walls", Mr. Moag said that they are not disturbing anything in that area. Mr. Moag explained that the whole point of the rock wall was to leave it in tact so that it is part of the natural landscaping. Mr. Ball concurred with this statement and he said there are no plans to disturb it. He said he didn't see anything that looked to be a foundation and is a very rocky area. Chairman Everett asked them again to clarify all of this. He said there is some potential historic value due to the Rutland Railroad running through there that we need to be sure doesn't create problems for this project. Mr. Henkel said the way this is drawn on the map the sand filter butts up against this "feature" ...it will be disturbed. Mr. Jablonka wanted to know what is archeological significant.

Chairman Everett stated that even though this is a Type 2 action under SEQR, the variance standards require that we evaluate whether this will have an impact on the environment even as this outside of SEQR. Mr. Moag asked if it would be necessary to Hartgen to evaluate it. Chairman Everett referred to Columbia County Health Department letter from August. It says the area tested is buildable and can accommodate a three bedroom home. He questioned the last paragraph where it states a "20 ft. berm on the sides and a 30 ft. berm on the downslope of the system. He is trying to understand what the berms are in correlation with the system. Mr. Moag replied that this was before they decided to switch to the sand filter system. This statement predates the sand filter according to Mr. Schrader.

Mr. Moag and Karen Kellog wanted to know why these issues weren't looked at when this lot was classified as a building lot. Chairman Everett explained that his building project request doesn't comply with the law so Mr. Moag has to go before the ZBA board.

Chairman Everett stated that we received a letter from Mr. Gruen, the neighbor. He asked if Mr. Moag had a chance to review Mr. Gruen's letter. Mr. Moag replied that he addressed some of his concerns in his letter to the board. Chairman Everett asked if the board thought that Mr. Gruen's letter about Mr. Moag's project be evaluated by the town engineer. Mr. Henkel replied that he saw a lot of points that had already been addressed by the board. Siting that Mr. Gruen was not in attendance he would like to ask Mr. Gruen what else he thinks need to be addressed. He said having an engineer review it seemed redundant. Mr. Leary indicated that the board had just received Mr. Gruen's letter that day. There seems to be assumptions and misstatements. Mr. Henkel said the only issue he saw that raised a concern was what will be seen with regard to the visuals of the mound system. The observation tube and bare mound were answered earlier. Mr. Jablonka asked if having the town engineer evaluate this would help the board move through the process. Chairman Everett believes he town engineer should look at it so it's on record. There is a lot of detailed information about the septic.

Mr. Gruen asked about noise in his letter. It was stated that the alarm system shouldn't go off and the pump is in a tank that is buried. Chairman Everett inquired if the alarm could be located inside the house or if it is required to be inside the house. Mr. Schrader will find this out from the CC DOH. Chairman Everett said we need to get some initial information in. He stated that Town law requires the ZBA refer to planning for their advisory opinion in this matter. The ZBA will continue the public hearing until next month. The public will have the opportunity to review the information in this time.

One of Mr. Gruen's questions is about noise. Mr. Schrader replied that there shouldn't be any noise. The pump is submerged underground in a tank. The alarm can be mounted in a variety of areas. Chairman Everett asked if it could be mounted in the house. Mr. Schrader will talk to the health department to see if this is possible. Mr. Henkel asked if there would be an odor.

Mr. Gruen's listed alternatives in his letter. He asked if Mr. Moag could build a smaller home and make the septic system smaller. Mr. Bell explained that this septic system is a much better system. It's a gold standard in comparison. According to Mr. Schrader, the footprint of the mound system is reduced because of the sand filter. Chairman Everett confirmed there aren't other locations on the property because of the stream setback. With reference to the pond in Mr. Gruen's letter, Mr. Moag stated there isn't a pond. The area gets wet and overflows from the stream sometimes. He didn't do anything to change the area where this wet area is. Chairman Everett stated this is not a zoning issue and therefore is irrelevant to this situation. Mr. Khosrova spoke that it is important that we remind the applicants that all documentation be received in the required time before the meeting.

Mr. Leary stated that Mr. Moag's property is in five acre zone. It's RL 2 and not an RL1 as Mr. Gruen stated in his letter, it's a non-confirming lot.

At this time, Chairman Everett asked if any members from the public wished to be heard. He adjourned the hearing until January 28, 2016. He requested that all information requested at this meeting be submitted by the 8th of January in order for this to go before the Planning board meeting scheduled for January 12th. Planning Board Chairwoman Cohen, who was in attendance, confirmed that this would be enough time for them to review the project.

Upcoming ZBA Appointment

Mr. Khosrova asked the ZBA members to support that Mr. Jablonka, who's seat is up for appointment at the end of 2015, is kept on the board because of his knowledge of many things he has done within the town. Mr. Jablonka stated that he has talked with the new supervisor and indicated his desire to remain on the board. Mr. Khosrova said he would draft a resolution to support Mr. Jablonka. A motion was made by Mr. Khosrova to support Mr. Jablonka's re-appointment to the ZBA. Chairman Everett seconded the motion and all members in attendance were in favor. The motion carried. Another motion was made at this time by Mr. Khosrova to keep Chairman Everett as the Chairman of the ZBA. Mr. Leary seconded the motion with all members present in favor. The motion carried. Separate resolutions will be drafted by Mr. Khosrova for approval and sent to the Chatham Town Board.

A motion to adjourn the meeting was made by Mr. Ooms and seconded by Mr. Leary. The meeting adjourned 8:07 PM.

David Everett, ZBA Chairman

Respectfully submitted,
Shari Franks, ZBA Clerk

MEETING ATTENDANCE SIGN-IN

Date: 12/29/15

ZONING BOARD)

Please PRINT your name and address clearly to assure the correct spelling in the minutes of this meeting.

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